

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
COURT FILE NO.: 15-cv-02102 (RHK/SER)

ROGER DURAND, LINDA DURAND,  
and PRISCILLA DURAND,  
Plaintiffs,

vs.

FAIRVIEW HEALTH SERVICES,  
Defendant.

/

VIDEOCONFERENCE DEPOSITION  
OF

ANNA WITTER-MERITHEW

\* \* \* \* \*

Taken by Plaintiffs

Charlotte, North Carolina

August 16, 2016

\* \* \* \* \*

Reported by:

CHRISTINE A. TAYLOR, RPR  
Registered Professional Reporter

ATTACHMENT 1

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REPORTER'S NOTE:  
THIS TRANSCRIPT CONTAINS QUOTED MATERIAL.  
SUCH MATERIAL IS PRODUCED AS READ  
OR QUOTED BY THE SPEAKER.

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E X H I B I T S

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REPORTER'S NOTES:

- \* Original exhibits are attached to original transcript.
- \* Copies of exhibits were made and sent to counsel for defendant.



1 Q. And have you had your deposition taken  
2 before?

3 A. Yes, I have.

4 Q. And have you had your deposition taken over  
5 videoconference before?

6 A. Yes, I have several times.

7 Q. So I'm glad you're familiar with this  
8 process. As you can see, there's some overlap from  
9 time to time. It's a little different than being in  
10 person. I just ask that you allow me to finish my  
11 question and I will take a pause. And if you would be  
12 so kind to wait and answer so we don't have that  
13 overlap, so that we can have a clear record; is that  
14 fair?

15 A. Absolutely.

16 Q. Great. And if there's any situation where  
17 you don't understand me or if there is -- my question  
18 is not clear, would you be willing to just ask me to  
19 repeat or rephrase?

20 A. I definitely will.

21 Q. Great. And is it fair to assume that if you  
22 answer my question, I can assume that you understood  
23 it both in terms of being able to hear it as well as  
24 understood the question?

25 A. I would say generally, yes, you should be

1 able to rely on that.

2 Q. Okay. Are you taking any medication today  
3 that would affect your memory or your ability to  
4 concentrate?

5 A. No.

6 Q. Okay. You received a deposition notice in  
7 this case; is that correct?

8 A. Yes, I did.

9 Q. All right. And, Madam Court Reporter, could  
10 you please mark for identification Exhibit 1, the  
11 notice that you have there in your stack?

12 (Exhibit 1 marked for identification.)

13 Q. Ms. Witter-Merithew, does that look like the  
14 notice that you received?

15 A. Well, I've been handed several documents.

16 Q. It should just be one document.

17 A. Okay.

18 Q. It should say "Amended Notice of Deposition"  
19 on it.

20 A. Yes. This looks like the same one that I  
21 received.

22 Q. Great. And then, also, Madam Court Reporter,  
23 if you could mark for identification Exhibit 2  
24 Defendant Fairview Health Services Amended Eighth  
25 Supplemental Answers to Plaintiff Interrogatories to

1 Defendant.

2 (Exhibit 2 marked for identification.)

3 Q. Ms. Witter-Merithew, have you seen this  
4 document before?

5 A. No. I don't believe I have seen this  
6 document.

7 Q. Okay. If you could please turn to page 4. I  
8 just want to ask if the paragraph explaining what you  
9 will testify about at trial, if that paragraph  
10 correctly and appropriately summarizes what you'll  
11 testify about.

12 A. Okay. Let me have a moment to read it.

13 Q. Certainly.

14 (Witness reviewed document.)

15 A. This doesn't really specify what I would be  
16 speaking to, but it seems what is stated here is  
17 accurate.

18 Q. Okay. Thank you. Ms. Witter-Merithew,  
19 you're here today to provide testimony in regards to  
20 your -- the testimony that you'll provide at trial for  
21 Fairview Health Services. What are you charging today  
22 for your appearance?

23 A. \$200 per hour.

24 Q. Okay. And do you have any fees for travel to  
25 this deposition?



1 A. No.

2 Q. Okay. How much did Fairview pay you to  
3 provide services to date?

4 A. I have, to date, been paid a \$2,000 retainer.  
5 I've exhausted that retainer, but I haven't billed for  
6 additional time yet.

7 Q. Okay. Approximately, how much additional  
8 time do you anticipate to bill for?

9 A. Well, I have approximately 22, 23 hours  
10 invested, and the retainer would cover approximately  
11 15 hours. So there's a difference of seven or  
12 eight hours that I need to bill for.

13 Q. And that's at \$150 an hour or \$200?

14 A. That's at \$150 per hour, yes, ma'am.

15 Q. And what are your fees for travel and  
16 appearance at trial?

17 A. Well, any of my direct expenses, so roundtrip  
18 airfare, accommodations, and then a minimum of  
19 eight hours at the \$200 for a day of testimony.

20 Q. Do you anticipate doing any more reports or  
21 consulting on this case for Fairview Health Services  
22 after today?

23 A. I don't anticipate doing any further reports.  
24 We haven't talked about doing any additional reports.  
25 I do believe that there may be continued consultation,

1 but the extent of that has not yet been determined or  
2 discussed.

3 Q. Thank you. Let's talk a little bit about  
4 your expert witness experience. How many years have  
5 you served as an expert?

6 A. I would say -- without looking at my expert  
7 report where I documented my work, I wouldn't know the  
8 year -- exact year that I started, but I believe it's  
9 been at least ten years in the last decade.

10 Q. And, approximately, how many reports have you  
11 submitted in the last ten years?

12 A. Somewhere in the range of 12 to 15.

13 Q. How do attorneys find you?

14 A. That's a great question. I've often  
15 wondered. Usually someone has referred them to me.

16 Q. So word of mouth?

17 A. That seems to be the typical way, yes, is  
18 that they have made contact with someone who is in the  
19 deaf world and that -- and they have expressed the  
20 need for an expert regarding specific types of issues  
21 and my name comes up as a part of that.

22 Q. Are you a part of any expert data bank?

23 A. No, I'm not.

24 Q. How many times have you had your deposition  
25 taken?

1 A. At least six.

2 Q. And were those for expert reports for, I  
3 assume, civil cases or were those criminal cases as  
4 well?

5 A. The majority have been -- the majority of my  
6 work as an expert has been in criminal cases. And so  
7 the majority of my depositions would have been in  
8 criminal matters. Well, actually, that's not true.  
9 That's more testifying at, for example, suppression  
10 hearings. The depositions would be in civil matters.

11 Q. So now is that distinction, would you say  
12 it's still approximately six depositions that you've  
13 taken?

14 A. Yes. Could I look at my expert report to  
15 refresh my memory.

16 Q. Sure. Madam Court Reporter, would you please  
17 mark the Anna Witter-Merithew M.ED. CV as Exhibit  
18 Number 3. And then, also, could you go ahead and mark  
19 Ms. Witter-Merithew's expert rebuttal report. At the  
20 top it should say Roger Durand, Linda Durand, and  
21 Priscilla Durand, plaintiffs versus Fairview Ridges  
22 Hospital, defendant, expert rebuttal report. That  
23 would be Exhibit 4.

24 (Exhibits 3 and 4 marked for identification.)

25 A. So I have four depositions noted in the

1 expert work that I have documented here, which is the  
2 work that I've done in the past ten years. There are  
3 a couple of earlier matters where I also provided  
4 deposition testimony. So in the past ten years, it  
5 would be four including today would be five instances  
6 of giving a deposition, an expert deposition.

7 Q. Can you name for me which four that you're  
8 referring to where you provided the expert  
9 depositions?

10 A. Yes. There is the February-June 2010  
11 deposition testimony in the matter of the Equal Rights  
12 Center versus the District of Columbia. There is the  
13 deposition testimony that was provided in the matter  
14 of Thomas J. Thomas via Mitsubishi Motor Corporation.  
15 There is the deposition in the matter of the State of  
16 Florida versus Lothar Schafer. And the deposition  
17 testimony in the matter of Trixy Betsworth versus the  
18 San Bernardino County, Arrowhead Regional Medical  
19 Center. Those are the four.

20 Q. Just to clarify, you provided a deposition  
21 for the July 2014 State of Florida versus Lothar  
22 Schafer; is that correct?

23 A. Yes. It was very unusual, but I did provide  
24 deposition testimony, yes.

25 Q. Were any of these four depositions situations

1 where you were an expert for the defendant?

2 A. In the July 2014 to February 2015, the Lothar  
3 Schafer case, I was working for the defendant. In the  
4 Arrowhead Regional Medical Center case, I was working  
5 for the plaintiff. In the Thomas versus Mitsubishi, I  
6 was an interpreter for -- I mean I was an expert for  
7 the plaintiff. And in the matter of the Equal Rights  
8 Center versus the District of Columbia, I was the  
9 expert for the District of Columbia, so the defendant  
10 in that matter.

11 Q. You mentioned that there were some other  
12 cases before April of 2007; is that correct?

13 A. Yes.

14 Q. Okay. What cases were those that you were a  
15 part of before 2007?

16 A. There was a civil case in the state of  
17 Georgia where a deaf gentleman -- and this was -- this  
18 was a long time ago, this was back in the seventies --  
19 where a deaf gentleman had purchased an alarm system  
20 and had some issues with the system and tried to  
21 return it. And I provided some expert testimony in  
22 that civil case regarding the best practice that  
23 interpreters should follow in terms of interpreting  
24 contract language. So that was in -- that would have  
25 had to have been prior to 1975 when I moved to

1 Rochester, New York. So sometime between '73 and '75.

2 And then in -- yeah, that's the one that I  
3 can recall at this point in time. There is another  
4 one, but the details are very vague to me right now.  
5 It was -- I know that it was a divorce case and there  
6 were some issues with interpreter access, and I  
7 testified on behalf of one of the parents in that  
8 matter. But it -- that was in North Carolina, but I  
9 don't -- I can't even remember the years now. I can't  
10 remember if that was in the eighties or the nineties.

11 Q. In the past three to five years,  
12 approximately how many cases have you reviewed and not  
13 written reports for?

14 A. At least three.

15 Q. And why did you make the determination to not  
16 write the reports for those three cases?

17 A. I felt that in two of the cases that the  
18 issues were outside my scope of expertise. One had to  
19 do with a driving school and the provision of  
20 interpreting services for teaching deaf individuals to  
21 drive 18-wheelers. And the type of instruction that  
22 was involved, the on-road instruction, et cetera, was  
23 so out far of my scope of experience that I couldn't  
24 imagine how interpreters could provide the  
25 accommodation, so I just felt that I wasn't the right

1 person to do that.

2 In another matter similarly, I felt that it  
3 was -- it had to do with the scientific field and the  
4 provision of interpreters in a scientific field that I  
5 felt was outside my expertise. And in another case, I  
6 reviewed it, it was another hospital matter, and I --  
7 and I didn't feel that there were any specific issues  
8 in that matter that I could speak to.

9 Q. How many expert reports or depositions or  
10 testifying do you anticipate to do in the next  
11 six months? You can start with reports.

12 A. I am currently in discussions around one case  
13 and I'm not sure where that may go, still doing some  
14 preliminary exploration with the attorney. I expect  
15 that -- I was supposed to have given testimony in a  
16 criminal case in Tennessee this summer, but that was  
17 postponed. The court postponed that. And so now  
18 that's scheduled for September, so I'll be giving  
19 testimony in that matter in September. And then this  
20 case. Those are the cases.

21 The Tennessee case -- oh, and I have one more  
22 case here in North Carolina that has just been  
23 dragging on for years that I'm still supposed to give  
24 some additional testimony in. That's another criminal  
25 case. And so they're talking about possibly October

1 for that matter.

2 And so on my list here, the testimony for the  
3 Tennessee versus Andrew Parker was originally  
4 scheduled for July 8th, but that's been postponed, so  
5 now that will be happening in September. The care --  
6 North Carolina versus Wellington Perez case, I gave  
7 some initial expert testimony, but now this case is  
8 getting ready to go to trial, and so they're thinking  
9 October. So I still have testimony to give in that  
10 matter. And then this case and then this other  
11 possible case that I've just started talking to an  
12 attorney about.

13 Q. Ms. Witter-Merithew, I noticed in your expert  
14 report compared to last page of your CV there's a case  
15 with Priscilla Saunders versus Mayo Clinic. In your  
16 CV it says May 2014 to January 2015 and in your expert  
17 report it says it's still present. Was that just an  
18 updating list or is there a reason for that  
19 distinction? Page 9.

20 A. Page 9 of my vitae?

21 Q. No, I'm sorry. The last page of your CV and  
22 let me find the page in your report. Page 8 of your  
23 report. I understand sometimes things just need  
24 updated. I wanted to clarify that distinction.

25 A. Sure. Thanks for calling that to my



1 attention. So, I'm sorry, can you, please, tell me  
2 what case you're talking about again?

3 Q. Certainly. The case, Priscilla Saunders v.  
4 Mayo Clinic, case number 13-CV-1972, on your CV it's  
5 the third one from the top. It says May 2014 to  
6 January 2015. And then on page 8 of your report, it  
7 says May 2014 to present. And I'm just trying to  
8 understand --

9 A. Yes, so that's --

10 Q. Let me finish.

11 A. I'm totally done with that case.

12 Q. So is that over?

13 A. Yes. Thank you for calling that to my  
14 attention. That is a clerical error. I should have  
15 caught that. And, yes, I'm done with that case.

16 Q. So you're no longer providing any services  
17 for --

18 A. No, I'm not.

19 Q. Thank you. What do you typically provide  
20 expert opinions about?

21 A. Well, you know, it depends on the nature of  
22 the case. In the criminal cases that I've worked  
23 with, my primary work focuses on the custodial  
24 interrogation process. So I look at issues of the  
25 interpretation and I typically analyze videos and do

1 transcriptions of what was communicated by the  
2 interpreter and how that compares to what was either  
3 stated by the deaf suspect or by the law enforcement  
4 officer in the matter. And I offer opinions about two  
5 parts: whether the interpretation is competent and  
6 accurate; and assuming that it is competent and  
7 accurate, then I look at whether or not it is  
8 accessible to the particular deaf person for whom it  
9 was rendered. So that's been the bulk of the criminal  
10 case work that I have done.

11 In terms of the civil work, it has varied.  
12 Yeah, it's been varied and interesting. But,  
13 generally, I focus on the system and the delivery of  
14 interpreting services within that system. And  
15 sometimes I'm looking at that from the perspective of  
16 the plaintiff depending on what the key issues are.  
17 So sometimes that has included in civil cases looking  
18 at the competence of the individuals who provided the  
19 interpreting services. Other times it's looking at  
20 the policies and procedures that are in place within a  
21 system and making determinations as to whether they  
22 are responsive to the legal requirements of that  
23 entity to make their services accessible. But there  
24 have been some exceptions to that.

25 Q. Sure. So, approximately, how many cases have

1 you been an expert involving medical facilities,  
2 whether for the plaintiff or the defendant?

3 A. That I've actually taken on, this would be my  
4 third one.

5 Q. So the Mayo Clinic case and the Arrow --

6 A. Arrowhead, uh-huh.

7 Q. -- Arrowhead Regional Medical Center, and  
8 this is the third one?

9 A. That's correct.

10 Q. And you served as plaintiff's expert so the  
11 defendant -- I'm sorry, the deaf individual's expert  
12 in the Arrowhead one; correct?

13 A. That's correct.

14 Q. And the expert for Mayo Clinic in the  
15 Saunders v. Mayo Clinic; correct?

16 A. That's correct.

17 Q. Have you written any reports about being a  
18 CODA and signing for deaf parents? Have you provided  
19 any expert analysis or position on that before?

20 A. In the Arrowood case, one of the individuals  
21 that was used as an interpreter was herself a CODA.  
22 She worked for the hospital and they actually had two  
23 individuals on staff who had some proficiency in sign  
24 language and they were called upon to provide  
25 interpreting services. But I didn't -- I didn't speak

1 specifically to the fact that she was a CODA, but I  
2 did do an assessment of her interpreting performance  
3 and included that in my report. So it wasn't really  
4 talking about her being a CODA per se, but the fact  
5 that she was a CODA and had native competence in the  
6 language was referred to in the report.

7 Q. Okay. Have you ever had your testimony  
8 stricken at any time in any court that you're aware  
9 of?

10 A. No, not that I'm aware of.

11 Q. Have you ever had your report stricken, as  
12 far as you know?

13 A. No.

14 Q. What attorneys have you consulted with in  
15 Minnesota?

16 A. Oh, goodness I would not know their names  
17 without having access to my files on my hard drive.  
18 I'm sorry.

19 Q. So Matt Frantzen is the only one that comes  
20 to mind right now?

21 A. For this particular case, yes.

22 Q. How about Rich MacPherson?

23 A. Sorry.

24 Q. Rich MacPherson.

25 A. The name doesn't ring a bell. I know that in

1 the Mayo case it was -- my work was primarily with a  
2 female attorney.

3 Q. Penny Phillips? Penelope Phillips?

4 A. I'm sorry, the name -- I don't know the name.

5 Q. Have you been a part of other cases in  
6 Minnesota?

7 A. Yes. I've been a part of a criminal case.

8 Q. The Kofieh Ryan case?

9 A. Yes.

10 Q. How much did you earn in 2015 for your expert  
11 work?

12 A. Without looking at my tax documents, it would  
13 just be an estimate, but I would say no more than  
14 \$5,000.

15 Q. How about 2014?

16 A. I would say somewhere between 5 to 10  
17 thousand.

18 Q. Have you written any papers, articles, or  
19 books on the provision of ASL interpreters in medical  
20 settings?

21 A. I have co-authored at least one article about  
22 the induction of interpreters in specialized settings  
23 which would include medical settings. It specifically  
24 addressed medical and legal settings.

25 Q. Who was the other author with you?

1           A. There were several other authors. And Carla  
2 Mathers, Richard Laurion, Patty Gordon, and myself. I  
3 believe there were four of us that contributed to that  
4 article. And that -- I would have to look at the  
5 citation, but I think that I was the senior author on  
6 that article, but I'd have to look at the citation.  
7 If I can look at my publication list in my resume, I  
8 could tell you specifically.

9           Q. Certainly. Do you want to look at your CV or  
10 report?

11          A. Yes. Actually, the last publication that I  
12 have, it's Witter-Merithew, Laurion Gordon, and  
13 Mathers, "Field Induction: Creating the essential  
14 elements for building competence in specialized  
15 settings." So that particular article talked about  
16 processes and procedures for inducting interpreters  
17 into specialized settings, the training they needed,  
18 how to provide supervised work experience, et cetera.

19          Q. I understand Richard Laurion and Patty Gordon  
20 are sign language interpreters here in the Minnesota  
21 area; is that correct?

22          A. Yes, they are.

23          Q. Other than that publication, do you have any  
24 others that specifically address the provision of ASL  
25 interpreters in medical settings?

1           A. There is -- in 2011, there's an article that  
2 was co-authored, myself and Dr. Brenda Nicodemus.  
3 It's entitled "Towards the intentional development of  
4 interpreter specialization: An examination of two  
5 case studies." The case studies focused primarily on  
6 interpreting in K-12 in legal settings, but the  
7 narrative and discussion leading up to the actual case  
8 studies does have some discussion of working in  
9 healthcare settings.

10           And then also the document right before --  
11 the two documents right before that, again, the one in  
12 2010 again with Dr. Nicodemus, "Conceptualizing a  
13 framework for specialization in ASL-English  
14 interpretation: Implications for interpreter  
15 education," that one and the next one in 2010  
16 regarding "Relational autonomy and decision latitude,"  
17 that included also Dr. Leilani Johnson. The three of  
18 us authored. Both of those talk about healthcare  
19 interpreting.

20           And then there's one other one that  
21 Dr. Nicodemus, Laurie Swabey, and I co-authored and I  
22 believe that Brenda was the senior author on that one.  
23 Let me look here. Yes, under Nicodemus B., Swabey L.,  
24 and Witter-Merithew, 2011, "Establishing presence and  
25 role transparency in healthcare interpreting." That

1 was published in an international journal.

2 Q. Thank you. I understand Laurie Swabey is  
3 also an interpreter and an administrator in the  
4 St. Kate's Center here in Minnesota?

5 A. That's correct. That's correct.

6 Q. You mentioned some information in your report  
7 about being a diagnostician. Is that the same as a  
8 linguist and, if not, how do you distinguish the  
9 difference?

10 A. So in my work as a diagnostician,  
11 specifically I have been trained in two different  
12 methods of looking at samples of interpreting  
13 performance and analyzing them for their overall  
14 quality, effectiveness, and accuracy. One of the  
15 methods that I've been trained in is one that was  
16 developed by Dr. Dennis Cokely which is referred to as  
17 miscue analysis.

18 The other one is a system that was developed  
19 by Dr. Marty Taylor that is based on certain language  
20 features and certain error types associated with  
21 specific language features in American Sign Language  
22 and English.

23 So I've been trained in both of those systems  
24 and have applied them well over 600 times to look at  
25 the performance of individual interpreters in a wide



1 range of settings. Sometimes they're the employees of  
2 a particular company. Sometimes they're individual  
3 practitioners. Sometimes they're -- you know, they're  
4 individuals that are working interpreters, but they're  
5 looking to boost their performance and they seek a  
6 diagnostic assessment.

7 So it's something that I've been involved  
8 with doing since the early nineties after I received  
9 the training in both of those methodologies.

10 Q. So just to clarify for the record, you said  
11 the first methodology that you use is called miscue  
12 analysis which was designed by Dennis Cokely; correct?

13 A. Uh-huh. well, it was -- miscue analysis is  
14 part of the bigger field of communication. Miscue  
15 analysis could be applied to all types of things. But  
16 Dr. Cokely applied that body of work to sign language  
17 interpreting and trained a good number of people to  
18 conduct diagnostic assessments applying that to the  
19 work of interpreters.

20 Q. Okay. And the other one was created by  
21 Dr. Marty Taylor, but I missed the name of it. What's  
22 the name of that assessment?

23 A. It's a system of language feature analysis,  
24 error types related to specific language features. So  
25 it's just called feature analysis.

1 Q. So is it an actual assessment?

2 A. Yes. It's an actual assessment process that  
3 can be applied. Yes. You can look at a sample of  
4 performance. And let's take, for example, in an  
5 individual's work the area of finger spelling. So  
6 that's a feature of American Sign Language. And the  
7 body of work, she's published two books on her study,  
8 and it grew out of her dissertation work. So when it  
9 comes to finger spelling, she has categorized specific  
10 types of errors that could occur. So you can look at  
11 someone's interpreting performance and you note that  
12 their finger spelling is deviating from the norm and  
13 you can look at the reason why and document it  
14 utilizing her feature analysis method.

15 Q. Other than the two diagnostic assessments  
16 that you just named, miscue analysis by Dr. Cokely and  
17 feature analysis by Dr. Marty Taylor, have you been  
18 trained in any other types of diagnostic assessments?

19 A. Yes. I have been trained in the -- what is  
20 called is SCPI, which is the sign language  
21 communication proficiency inventory. That is -- it's  
22 an interview technique, an interview approach, much  
23 like what was utilized by Dr. Kegl in her work with  
24 the Durands. So through the use of structured  
25 interview, you elicit certain types of information.

1 And you can use the findings from that to ascribe a  
2 level of proficiency to overall language use.

3 So the -- that -- the sign language  
4 communication proficiency inventory is much more about  
5 providing a global determination of someone's language  
6 ability, where the other two methods are really more  
7 growth-oriented. They're really designed to help  
8 someone determine where their error types are  
9 occurring and it allows you to be much more  
10 prescriptive in helping individuals really hone in and  
11 target on improving specific skills. So, you know,  
12 different methods allow you to achieve different  
13 things depending on what your goal of engagement is.

14 Q. So is it your understanding that  
15 Dr. Shepard-Kegl conducted the SCPI evaluation on the  
16 Durands?

17 A. No. I don't think that she -- that her  
18 methods strictly followed that. But she did use a  
19 language proficiency inventory approach to her work.

20 Q. Different than the SCPI, the SCPI; correct?

21 A. Yes. Yes.

22 Q. So you've been trained in the miscue analysis  
23 by Dr. Cokely, feature analysis by Dr. Marty Taylor,  
24 and at some point the sign language competency  
25 proficiency inventory; correct?

1 A. That's correct.

2 Q. Any other diagnostic assessments that you  
3 have in your repertoire?

4 A. No. Those are the three that I've relied on  
5 in my career.

6 Q. Do you consider yourself an expert in  
7 linguistics?

8 A. No, I do not.

9 Q. Either ASL or English linguistics?

10 A. I perceive myself as fluent in American Sign  
11 Language. I perceive myself as an expert, not an  
12 expert linguist, but an expert in determining and  
13 observing levels of competency and accuracy in the use  
14 of American Sign Language either for communication or  
15 for the purpose of interpreting. I have an  
16 undergraduate degree that has an emphasis in  
17 interpreting and linguistics, but I'm not an expert  
18 linguist. I don't perceive myself as a linguist, no.

19 Q. Where was your undergraduate degree from?

20 A. Empire State.

21 Q. And what year did you graduate?

22 A. 1979.

23 Q. What sort of courses did you take for that  
24 program? What's the name of your degree?

25 A. It's a Bachelor's of Professional Studies, a

1 BPS. And I went to Empire State. It's more for a  
2 degree completion program. I had done several years  
3 of liberal arts education at Abilene Christian  
4 University in Abilene, Texas.

5 When I moved to Rochester and began working  
6 at the National Technical Institute for the Deaf, I  
7 enrolled in the program at Empire. And so the  
8 approach of the Empire Program, it's more  
9 nontraditional education. And so it involves the  
10 creation of learning contracts. And so I did a  
11 learning contract which translates into course and  
12 course credit in the area of ASL linguistics, in the  
13 -- several in the area of interpretation, ASL  
14 semantics. Yeah. And then as well --

15 Q. Did you have --

16 A. I'm sorry.

17 Q. I was just wondering did you have professors  
18 that actually taught you ASL linguistics at Empire  
19 State in 1979?

20 A. I had a panel of experts that I worked with  
21 who guided my learning, several of whom, themselves,  
22 were linguists working at the National Technical  
23 Institute for the Deaf in collaboration with the  
24 professors and -- I'm trying to remember the term that  
25 we called them -- almost like your mentor, your school

1 mentor, who would guide the learning experience. And  
2 then depending on what the learning contract involved,  
3 you would have to present your knowledge either  
4 through written manner, you know, through papers that  
5 would have to be presented or you would have to  
6 present your learning to a panel of learners who would  
7 ask you questions. It would just depend on the nature  
8 of the learning contract.

9 Q. Was there a significant portion of  
10 independent study?

11 A. Well, I would say much of it was independent  
12 study, but it was guided independent study. So  
13 independent study to the extent that I had to work  
14 independently, but I did have to meet regularly with  
15 individuals who I had to review my learning with, I  
16 had to seek their counsel and advice on, and I would  
17 receive one-on-one mentorship to help me understand  
18 the course content that I was dealing with.

19 This was all at the time when ASL, the whole  
20 field of ASL linguistics was still relatively new.  
21 And so we -- people were being creative in the  
22 process.

23 Q. Correct. And just curious, the first ASL  
24 linguistics book that I've heard of being published  
25 was in like 1996, right? So are you aware of any ASL

1 linguistics books in 1979?

2 A. Well, there's the work of Stokoe, you know,  
3 William Stokoe, out of Gallaudet University, and that  
4 was long before. I don't remember the exact year, but  
5 I want to say that it was much earlier in the  
6 seventies. It may have been actually been in the late  
7 sixties.

8 Q. And you're referencing Stokoe as being an  
9 author of ASL linguistics?

10 A. Yes. He's considered the father of ASL  
11 linguistics.

12 Q. So how do you conduct your language  
13 diagnostics of deaf individuals? Do you use the SCPI  
14 or how do you reach those conclusions when we're not  
15 talking about interpreting?

16 A. If I may, I want to also add that one of the  
17 graduate certificates that I received from the  
18 University of Colorado at Boulder was in ASL and  
19 interpreting. And in that program there were six  
20 courses, two of which dealt with ASL linguistics and  
21 those were taught by Dr. Betsy Winston who is a Ph.D.  
22 sociolinguist in the field. So those -- I've had  
23 those additional courses in ASL linguistics as well.  
24 I just wanted to make sure that was clear.

25 Now, in response to your question about how I

1 conduct the interviews. It depends on the overall  
2 focus of the interview, but normally I simply use a  
3 set of predetermined questions. And the questions are  
4 designed to elicit a variety of types of responses.  
5 Some of them are designed to elicit short responses,  
6 yes or no responses, and others are designed to elicit  
7 a narrative response covering a wide range of subject  
8 matter including personal history, social experiences,  
9 educational background, work history, sports and  
10 hobbies, family relationships, just a wide range of  
11 subject matter, current events that -- discussions  
12 of -- it depends on what's happening in the broader  
13 society. So if I was doing it right now, I'm sure I'd  
14 be adding some questions that have to do with the  
15 upcoming elections. And also talking about systems,  
16 what one does to get a driver's license, what one has  
17 to do to get car insurance, what you have to do to  
18 apply for social security benefits, or it just depends  
19 on the overall purpose, but it's a range of questions.  
20 And I have those questions preset so that they can be  
21 reviewed by the individuals that are requesting my  
22 service, not the individual who I'm doing the  
23 assessment with, but the attorneys, for example, or  
24 any other consultants. And if they want to add to  
25 those, then as long as they fit into the categories of



1 questioning that I'm using as the format, then I'm  
2 happy to add questions to the pool of questions that I  
3 use.

4 Then I engage in that interview process. And  
5 I videotape it where both what I'm doing can be seen  
6 and what the individual is doing can be seen. And I  
7 would say more and more frequently -- I haven't  
8 always, but more and more frequently I'm utilizing a  
9 deaf colleague to come with me. And I have the deaf  
10 colleague -- primarily that has been -- I've used in  
11 the case -- the Minnesota criminal case, I used Jimmy  
12 Beldon who is a CDI interpreter that I have known all  
13 of his life and have had professional associations  
14 with. And so in other places I've used a gentleman  
15 named Larry Smolek who's another CDI.

16 So I have found that having a deaf-to-deaf  
17 interaction sometimes gets to language use in a  
18 somewhat different way even though I come from a deaf  
19 family, I have deaf parents, I've grown up in the  
20 community. Sometimes it just reveals different things  
21 and then I'm able to observe more and make notes  
22 during the process.

23 And then I take the results of that and I  
24 analyze the way in which language was used and I  
25 determine how that fits into the descriptions. There

1 are five levels of proficiency. And I make a  
2 determination of where that person falls based on  
3 their practical use of the language, their grammar,  
4 the form and function, both form and function of the  
5 language.

6 Q. Thank you.

7 A. Uh-huh.

8 Q. We're going to go off the record now.

9 A. Okay.

10 (Recess taken from 10:27 a.m. until 10:39 a.m.)

11 BY MS. GILBERT:

12 Q. So, Ms. Witter-Merithew, you were giving us  
13 an explanation of how you conducted language  
14 diagnostic for deaf people. And I just want to know  
15 is that something you've created yourself? Is that a  
16 specific assessment that's been published that's able  
17 to be repeated and used by other diagnosticians?

18 A. It is based on the Sign Language  
19 Communication Proficiency Inventory process, and that  
20 overall process and procedure has been well documented  
21 and published. The specific questions that I ask have  
22 not been published other than beyond the reports that  
23 I do. But the format, the process is drawn from a  
24 well-published model.

25 Q. Have you ever been employed or retained by a

1 hospital or other medical facility to develop a  
2 hospital policy regarding ASL interpreters?

3 A. Not to develop a policy, no.

4 Q. Anything similar to that?

5 A. To -- no. No.

6 Q. So you've been retained by hospitals to be an  
7 expert witness, but not retained by hospitals to do  
8 consulting on policies and practices for providing  
9 interpreters; correct?

10 A. Well, in the -- in the cases that I have  
11 worked on, when I have been working for the hospital,  
12 for example, in the Mayo Clinic, there was a period  
13 of -- I was a consult -- I was doing consulting expert  
14 work with them. So they did ask for the policies to  
15 be reviewed and commented on.

16 Q. Are you currently engaged in any teaching  
17 positions?

18 A. Yes and no. I'm officially retired as of  
19 July 1st of 2015 from the University of Northern  
20 Colorado where I was involved in program  
21 administration and teaching, but I continue under  
22 contract with them one day a week. And in that  
23 capacity I'm not directly teaching, but I'm overseeing  
24 instruction and I help design instruction.

25 Q. Would you consider that an administrative

1 role?

2 A. Well, I would consider it part of what I do  
3 with them administrative and part of what I do with  
4 them instruction. And so it impacts teaching and I  
5 have to apply my knowledge of teaching and learning as  
6 a part of that.

7 Q. Do you have any other administrative duties  
8 that you're engaged in right now?

9 A. Yes. I'm also under contract with the  
10 registry of interpreters for the deaf acting as an  
11 interim executive director while they conduct a search  
12 for an executive director.

13 Q. What are your duties as the interim executive  
14 director?

15 A. I hesitate only because it's a big job, much  
16 bigger than I think any of us anticipated at the time  
17 that I was brought onboard. Essentially, the court  
18 role is managing the day-to-day operations of the  
19 association which includes a 17-member headquarters  
20 staff, the supervision and guidance for a 17-member  
21 headquarters staff.

22 Q. So for RID are you engaged in any of the  
23 lawsuits pending right now? Do you represent RID at  
24 court proceedings?

25 A. When I -- that's what I meant by it wound up

1 being much bigger than we anticipated. At the time  
2 that I came onboard, there were either -- there were a  
3 couple of lawsuits started and a couple of more  
4 lawsuits that came in. So there were four active  
5 lawsuits in the time I've been there. But they've all  
6 at this point been resolved. We have no active  
7 lawsuits. And in those lawsuits when it came to  
8 representing the corporation, yes, I was the  
9 operations person that spoke to those issues.

10 Q. I understand there was a recent issue between  
11 the National Association of the Deaf and the Registry  
12 of Interpreters for the Deaf, and the National  
13 Association of the Deaf disassociating or somehow  
14 breaking off its collaboration. Can you explain what  
15 happened there between NAD and RID?

16 A. I'm happy to. Can I ask how that's germane  
17 to this matter?

18 Q. It very well may be. So I just -- yeah, I  
19 would like to know what your understanding is of that.

20 A. Okay. There -- NAD and RID had made an  
21 agreement to collaborate on an examination, what is  
22 referred to as the national interpreter certification.  
23 And over recent years there have been off and on  
24 efforts between RID and NAD to get their agreements  
25 put into writing. All that they have had is a very

1 Loose memo of understanding and there was not a  
2 business agreement that had been documented.

3 And one of the lawsuits that RID had to  
4 manage in recent years involved the joint  
5 certification between the two organizations. And RID  
6 felt that it was imperative to get that business  
7 agreement in place. And, ultimately, NAD determined  
8 that they really didn't want to share in the cost or  
9 the liability of administering that exam.

10 So what actually was decided upon is that  
11 they wanted their name removed from the exam and they  
12 would be available for consultation, but that the more  
13 appropriate role for their organization was as an  
14 overall watch dog rather than a partner in  
15 certification.

16 So RID and NAD continued to collaborate on  
17 various committees work efforts, but they are no  
18 longer partners in terms of the administration of the  
19 national interpreter certification.

20 Q. Thank you. In addition to your role as  
21 interim executive director at RID and still providing  
22 some advising to Duet Center, is there any other --  
23 and serving as an expert witness, is there anything  
24 else. Are you still providing interpreting services?

25 A. Much less than I did a year, year-and-a-half

1 ago. So I rarely provide interpreting services or I  
2 have rarely provided interpreting services in the last  
3 year and a half since I onboarded with RID. There's  
4 just insufficient time. But I certainly will return  
5 to my interpreting practice once that contract with  
6 RID is complete.

7 Q. So up until about 2015 -- 2014, 2015, you  
8 were providing interpreting services?

9 A. Yes.

10 Q. Were you interpreting in your local community  
11 in Concord or Charlotte?

12 A. Yes, and in other locations as requested.

13 Q. Were you providing medical interpreting in  
14 Charlotte, Concord, or other locations as requested?

15 A. For most of my career, my focus has been on  
16 interpreting in legal settings and rarely would I do  
17 medical situations. But depending on who was making  
18 the request or if there was an emergency situation, I  
19 would be willing to provide interpreting services in  
20 just about any setting including medical setting. But  
21 most of my work has been in the area of legal  
22 interpreting.

23 Q. Let's say in the last ten years, how many  
24 medical interpreting jobs have you participated in?

25 A. I would say somewhere between 12 to 15.

1 Q. And where were those jobs -- what kind of  
2 location, hospitals?

3 A. Doctor's offices. Primarily doctor's offices  
4 working with medical specialists, testing procedures  
5 that would be done at a hospital, but, you know, would  
6 just be an outpatient, you go in for the test  
7 procedure and then you leave.

8 Q. Any experience serving as an on-call  
9 interpreter or emergency response interpreter for ER?

10 A. No.

11 Q. And when I say ER, I mean like an emergency  
12 room.

13 A. Right.

14 Q. And when you say no, you mean no on-call work  
15 in the last ten years or that just hasn't been a part  
16 of your career?

17 A. No on-call work. I don't know if I could go  
18 back ten years, but in recent years no on-call work.

19 Q. Have you ever interpreted in the state of  
20 Minnesota?

21 A. Not that I recall.

22 Q. Have you done other forms of work in  
23 Minnesota like presentations, workshops?

24 A. Yes. Yes.

25 Q. But never served as an actual interpreter



1 here; correct?

2 A. Not that I can recall. I hesitate only  
3 because the conference of interpreter trainers have  
4 had a conference there and the Registry of  
5 Interpreters for the Deaf has had conferences there.  
6 And on occasion I have done conference interpreting,  
7 but I don't recall specifically having interpreted in  
8 Minnesota.

9 Q. Do you consider yourself an expert on the  
10 Americans with Disabilities Act?

11 A. No.

12 Q. How about the Minnesota Human Rights Act?

13 A. No.

14 Q. How about the Federal Rehabilitation Act?

15 A. No. I wouldn't consider myself -- I would  
16 consider myself knowledgeable but not an expert in  
17 those laws or acts.

18 Q. You've been a professor of an interpreter  
19 training program; correct?

20 A. Yes.

21 Q. And the name of that is the Duet Center?

22 A. Well, the -- I've been -- yeah. The  
23 University of Northern Colorado Distance Opportunities  
24 for Interpreter Education Center is now actually the  
25 Department of American Sign Language and Interpreting

1 Studies. And that department offers a BA degree in  
2 interpreting and I have served as the director of that  
3 program.

4 Q. And when I say interpreter training program,  
5 it's sort of a generic term in the sense of some  
6 interpreting training programs might be two-year  
7 degrees; correct?

8 A. Yes. And some interpreter training programs  
9 might be in-service training programs that prepare  
10 interpreters to work in specialized settings.

11 Q. So an interpreter training program can range  
12 from six weeks to six years or maybe even more beyond  
13 that, right, depending on the program?

14 A. Yes, depending on the scope and purpose of  
15 the program.

16 Q. Other than the University of Northern  
17 Colorado, have you been a professor of other colleges  
18 or universities that provide interpreting training  
19 programs?

20 A. Yes. I taught both part-time and full-time  
21 at Central Piedmont Community College in Charlotte,  
22 North Carolina. I taught in the -- I directed and was  
23 the chair person for the Department of Interpreter  
24 Education at the National Technical Institute for the  
25 Deaf on the campus of the Rochester Institute of

1 Technology.

2 Q. Have you ever had students that were children  
3 of deaf parents in your interpreter training program?

4 A. Yes.

5 Q. You're also a child of a deaf adult, is that  
6 correct, Ms. Witter-Merithew?

7 A. Actually, deaf adults. Both my parents were  
8 deaf, yes.

9 Q. Did your parents use American Sign Language  
10 with you when you were younger?

11 A. Yes.

12 Q. Did they also speak with you and use English?

13 A. Not my father. My father was profoundly deaf  
14 and only used American Sign Language. He did, on  
15 occasion, you know, as just part of our household  
16 leave us written notes, et cetera. But he did not use  
17 his voice.

18 My mother came from a family of seven  
19 children, three of which were deaf, my mother and two  
20 of her brothers. And so in her family, they used a  
21 combination of signing and speaking. But my mother's  
22 speech was definitely marked as speech of a deaf  
23 person. So, although, my siblings and I understood  
24 our mother, the general public would not understand  
25 her. And so she would use a combination of speaking

1 and signing to us. Her and my father used only sign  
2 language with one another, but they were always  
3 signing to us. Sometimes with my mom, she would be  
4 signing and using her speech simultaneously.

5 Q. Are your parents still living?

6 A. No, they aren't.

7 Q. Did you ever when they were living provide  
8 interpreting services for them in medical facilities?

9 A. In medical facilities, I would say not in  
10 medical facilities. On occasion at the doctor's  
11 office, yes.

12 Q. And why -- is that because you're a certified  
13 interpreter or how did it come to be that you were  
14 interpreting for your parents?

15 A. Sometimes it was because interpreters weren't  
16 available and the need to go to the doctor was  
17 significant enough, we needed to get there. And so I  
18 would pitch in because they needed the information  
19 from the doctor. Sometimes it was because my father  
20 in particular was born in 1907 and so he was born  
21 during a time when access was very -- was nil, really  
22 was nil. So he often just would not advocate for  
23 himself to receive services that he was entitled to.  
24 And so I would always go with the intention of just  
25 being his daughter because he -- my parents lived with

1 me in the later years of their life and I helped to  
2 care for them. But I would wind up interpreting  
3 because he went to a doctor who knew sign language,  
4 but the doctor was not proficient and I knew he really  
5 didn't understand.

6 Q. And did -- from what -- during what era were  
7 your parents living with you, what time frame, like  
8 the seventies, eighties?

9 A. My parents lived with me from the  
10 mid-eighties, from like 1983, '84 until they passed  
11 away. My mother passed away in 1992 and my father  
12 passed away in 1994.

13 Q. So a large portion of them living with you  
14 was before the passing of the Americans with  
15 Disabilities Act?

16 A. That's correct.

17 Q. Are your siblings deaf or hard of hearing?

18 A. No. I have two siblings, an older sister and  
19 a younger sister, and all of us are able to hear.

20 Q. Are they fluent in sign language?

21 A. No.

22 Q. So I assume they're not certified  
23 interpreters; is that correct?

24 A. That's correct.

25 Q. Did your siblings interpret for your parents

1 in medical facilities?

2 A. I'm certain that my older sister did not. My  
3 younger sister may have because my parents did live  
4 with her for a period of about three years.

5 Q. I'm sorry, I missed that. So you understand  
6 that that sister did provide interpreting services for  
7 your parents?

8 A. No. She may have. I've never talked to her  
9 about whether she did or not, but she may have because  
10 she was there and they were living with her and so she  
11 was supporting them. So she may have interpreted for  
12 them at the doctors, I don't know.

13 Q. When you were an instructor at the various  
14 interpreter training programs, what did you teach your  
15 students that were CODAs about interpreting for their  
16 parents?

17 A. That it -- that -- avoid it if you can at all  
18 costs.

19 Q. Really. why is that?

20 A. Because it's very difficult to maintain  
21 impartiality when the information, particularly in a  
22 case where you may be providing other types of support  
23 to your parents because they're elderly and have other  
24 needs, if you're that primary support person, it's  
25 very difficult to maintain impartiality and interpret

1 the information clearly.

2 Q. Is there any other reason why children of  
3 deaf adults shouldn't interpret for their parents in  
4 medical settings other than the impartiality concern?

5 A. Well, impartiality is -- you know, there's a  
6 lot -- that concept of impartiality. So I would say  
7 that's the overarching -- that's the overarching  
8 reason.

9 Q. Do you ever have concerns about the  
10 qualifications of a child interpreting for deaf adults  
11 in a medical setting?

12 A. Well, certainly, that -- you know, when you  
13 ask me about interpreting and you're talking about  
14 people being in interpreter training programs, I'm  
15 assuming that they have the ability to interpret. So,  
16 certainly, just because you have deaf parents in no  
17 way prepares you to be an interpreter, for sure.  
18 There's a significant difference between communicating  
19 with your parents and interpreting for your parents.

20 Q. Yeah. And we'll get into that. Right now  
21 I'm just trying to understand what your teaching is  
22 regarding ethical considerations with CODAs  
23 interpreting for their parents. So you mentioned  
24 impartiality, I just wondered if you had any other  
25 concerns, whether it was for the deaf parents or for

1 the actual child themselves interpreting for their  
2 parents in medical settings?

3 A. Well, no, not -- not specifically. Not  
4 specifically, no.

5 Q. We delivered to opposing counsel a set of  
6 materials that included Judy Shepard-Kegl's report as  
7 well as several other reports from Annemarie Baer,  
8 B-a-e-r, Betty Colonomos, but Betty Colonomos also had  
9 another report that was specifically addressing CODAs.  
10 Did you have a chance to review those materials?

11 A. Yes, I did.

12 Q. Okay. Did you review those before you wrote  
13 your report or recently?

14 A. No, I reviewed those before I wrote my  
15 report.

16 Q. Okay. So you read both of Betty Colonomos's  
17 reports, not just one; correct?

18 A. Yes. I pronounce it as Betty Colonomos.  
19 And, yes, I read both her report and I believe that I  
20 addressed that in my expert report that I had read her  
21 comments regarding CODAs. And I found them to be an  
22 accurate description of who CODAs are and generally  
23 what their life experience is like.

24 Q. Also, included in the expert report were PDFs  
25 that were changed from Excel spreadsheets to PDFs with



1 data from Roger and Linda Durand. Were you also  
2 provided with those raw data sheets?

3 A. Are you speaking to the LVS data about the  
4 lip reading?

5 Q. Yes. Madam Court Reporter, could you please  
6 mark for exhibit -- there are two documents with no  
7 titles on them. It says the words "correct,"  
8 "incorrect" and "routine."

9 (Exhibit 5 marked for identification.)

10 A. Yes, I did see these.

11 Q. And, also, I'm just going to go ahead and  
12 mark the other two as 6 and 7. So report on Priscilla  
13 Durand drafted by Betty Colonomos prepared for  
14 Dr. Judy Shepard-Kegl, that will be 6. And Number 7  
15 will be the ASL Assessment, interviewee Priscilla  
16 Durand, that will be exhibit 7.

17 (Exhibits 6 and 7 marked for identification.)

18 Q. Ms. Witter-Merithew, looking at Exhibits 5,  
19 6, and 7, do those look familiar to you?

20 A. Yes.

21 Q. Have you seen them before?

22 A. Yes.

23 Q. Did you receive those before you drafted your  
24 rebuttal expert report?

25 A. Yes.

1 Q. Not included in this stack is a report  
2 prepared by Betty Colonomos regarding the emotional  
3 and mental challenges of Priscilla Durand as a CODA.  
4 That's not included here because I understood that  
5 you're a rebuttal expert with regard to Judy Shepard-  
6 Kegl; is that correct?

7 A. I'm sorry, could you repeat the last part of  
8 what you said?

9 Q. Certainly. I understood looking at your  
10 report that you're a rebuttal expert writing a  
11 rebuttal report with regard to Judy Shepard-Kegl's  
12 expert report; is that correct?

13 A. That's correct.

14 Q. Okay. The reason I'm putting these before  
15 you is there was some confusion last week about  
16 whether or not Fairview received all these materials  
17 on the disks that we provided to them. I wanted to  
18 make sure that you have seen them and you've had time  
19 to review them?

20 A. Yes.

21 Q. Okay. And in addition you've also received  
22 several hours of video recorded footage of the  
23 Durands; is that correct?

24 A. That's correct.

25 Q. I note in your expert report, and I can show

1 you where, but you mentioned that you didn't have the  
2 chance to review any of the footage that was the  
3 interpreting assessment of Priscilla Durand?

4 A. I didn't have a chance to review the part  
5 that Ms. Colonomos talks about in her report. It  
6 seems there was a 45-minute segment of where she  
7 interacts with Priscilla and that that was  
8 self-generated, you know, between the two of them.  
9 And I did not have the chance to see that. Anything  
10 that Dr. Kegl developed and she may have provided to  
11 Ms. Colonomos, I did have the opportunity to look at  
12 that, but not anything that Dr. -- I mean, that  
13 Ms. Colonomos may have developed or used as part of --  
14 in addition to that.

15 Q. Okay. That's what I wanted to clarify. So  
16 you did have a chance to observe, I think it was about  
17 two hours of interpreting material, that  
18 Dr. Shepard-Kegl recorded and provided to  
19 Ms. Colonomos to use to assess in reaching her -- in  
20 formulating the data regarding Priscilla Durand's  
21 interpreting skills; correct? You had that two hours  
22 of footage to review?

23 A. The footage that I reviewed, all toll would  
24 have been close to about two hours, but it included  
25 the Durands' communication and retelling of some

1 stories, et cetera, and were not specific to  
2 Priscilla's interpreting. But there were pieces that  
3 were specific to her interpreting, but it didn't  
4 equate to two hours worth of footage.

5 Q. Okay. Approximately, how long do you believe  
6 that footage was that you would call interpreting?

7 A. There's the Ted talk that was about, I want  
8 to say, maybe 15 to 20 minutes in length. There was a  
9 deaf individual generating a vlog that was about --  
10 I'm thinking that was maybe 10 to 15 minutes in  
11 length. There was maybe about a 25-minute interaction  
12 that was supposed to be an interpreted interaction,  
13 that was how Dr. Kegl set it up, but then it changed.  
14 And Dr. Kegl became involved in communicating with the  
15 parents directly, so it never really -- I didn't  
16 really count that as an interpreted event because its  
17 intention wasn't fulfilled in the way that the process  
18 was structured.

19 And then there were several clips where --  
20 I'm thinking they were maybe less than five minutes  
21 each where Priscilla is talking about, you know, her  
22 reflections on the interpretations and one where right  
23 before Dr. Kegl took her into the session where she  
24 was supposed to interpret an interaction between  
25 Dr. Kegl and her parents, but then it changed and

1 Dr. Kegl started interfacing with the parents  
2 directly. She's also talking about some anxiousness  
3 in anticipation that she has in actually interpreting  
4 that piece.

5 So those are the pieces that I recall. It's  
6 been, I don't know, what, maybe six weeks, eight weeks  
7 since I actually looked, but those are the ones that I  
8 recall.

9 Q. And you didn't provide an assessment of  
10 Priscilla Durand's interpreting abilities; correct?

11 A. No. I -- no. I took no issue with the fact  
12 that she was not qualified to provide interpreting  
13 services.

14 Q. Okay. So you agree with that conclusion?

15 A. Correct. I believe I stated that. To me,  
16 that was not -- that was not at issue. Whether or not  
17 she could interpret was not at issue in terms of what  
18 I was asked to look at or the fact that the parents  
19 were deaf was not at issue.

20 Q. So you understand that it's not an issue or  
21 concern in this case for Priscilla -- whether or not  
22 Priscilla Durand was qualified to convey information  
23 from healthcare providers to the Roger and Linda  
24 Durand, you believe that's not an issue in this case?

25 A. It was not -- I was asked to look at whether

1 or not there was evidence that she had been expected  
2 to interpret or asked to interpret. And I found no  
3 evidence of that. So based on that, whether she could  
4 interpret or not was not a primary question for me to  
5 answer. The question that I sought to answer was  
6 whether or not she had been forced to interpret or  
7 expected to interpret. And I did not -- other than  
8 what was reported that Shaun stated, which was that  
9 his siblings would do some of the interpretation, I  
10 did not see any indication that she had been asked to  
11 interpret by the hospital or expected to interpret by  
12 the hospital.

13 Q. So help me to understand. Fairview hired you  
14 to evaluate the evidence of what people said in  
15 depositions and to determine if you were convinced  
16 that there was evidence of Priscilla being asked to  
17 interpret?

18 A. One of the claims in the -- in the suit was  
19 that -- or the statements that had been made by the  
20 expert was that Priscilla was forced to interpret. So  
21 that then led me to explore whether that statement was  
22 substantiated by all the information that I had been  
23 given, and it was not.

24 Q. Okay. I must not have asked that question  
25 very well. Was it your understanding that Fairview

1 hired you to opine on the evidence in the depositions  
2 regarding whether or not Priscilla Durand was asked or  
3 forced to interpret?

4 A. I was hired to opine on the expert report  
5 which included reference to the fact that she was to  
6 interpret and that I was given access to all of the  
7 information that I was given access to to help me come  
8 to my opinions.

9 Q. Okay. I'm trying to figure out why -- for  
10 what purpose Fairview hired you, and you've got three  
11 conclusions in your report. And I'm trying to  
12 understand is that the direction that you received  
13 from Fairview to opine on the evidence in the record  
14 regarding whether or not Priscilla was asked to  
15 interpret?

16 A. No. They asked me to -- initially, they  
17 asked me to review the material and to indicate to  
18 them what I saw as the central issues. And so the  
19 direction of my report is one that came from my own  
20 review and analysis of the material that I was  
21 provided.

22 Q. So they asked you to tell them what the  
23 central issues are to the case?

24 A. What the central -- what, if any, central  
25 issues were evident in the expert report by Dr. Kegl.

1 And so because the claim -- because she made the claim  
2 and spent so much time focused on Priscilla and  
3 Priscilla's communication and the emotional  
4 experiences that she had because she was forced to  
5 interpret, that became something that I needed to look  
6 for independent other evidence to support or not.

7 Q. So Fairview didn't give you any questions of  
8 what they would want you to opine on?

9 A. I would have to -- I'd have to go back and  
10 look at our initial e-mail communication. But I  
11 don't -- I -- initially, Matt and I had a conversation  
12 about the case. I told him that I would be willing to  
13 review the material and that I would then follow up  
14 with him if I thought that there -- that it fit my  
15 skill set and there were, in fact, issues that I was  
16 qualified to speak to. And then after we had that  
17 conversation, the second conversation where I did  
18 follow up after he sent me the material and I looked  
19 at it, I shared with him what I thought were issues  
20 that I could address and we agreed that that's what I  
21 would do.

22 Q. And so you believed that your qualifications  
23 included opining on whether or not there's evidence in  
24 the case about Priscilla Durand being, I think in your  
25 report the way you phrased it is Fairview refused to



1 offer interpreters?

2 A. I don't understand the question.

3 Q. Okay. That's fine. Let's look at your  
4 report, which is Exhibit Number 4, and go to page 4.  
5 About the third paragraph down, the second full  
6 paragraph, it says, "The questions that this expert  
7 will offer opinion about are," and you've got number  
8 1, "whether Fairview Ridges Hospital refused to offer  
9 interpreting services." Is that -- is it your  
10 understanding that Fairview hired you to opine on  
11 number 1?

12 A. Yes.

13 Q. Okay. And you believe that your expertise  
14 and qualifications enable you to opine on number 1?

15 A. Yes.

16 Q. Okay. And about halfway down in response to  
17 number 1, your conclusion is that there's no  
18 compelling evidence that Fairview Ridges Hospital  
19 refused to offer interpreting services. Is that your  
20 conclusion --

21 A. Yes.

22 Q. -- with regard to the question? Okay.

23 And what is your expertise or qualifications  
24 or knowledge or experience that equips you to draw the  
25 conclusions in number 1?

1           A. There is a policy that was in place that I  
2 was able to review. There was deposition testimony  
3 that I was able to review. And there's no -- there  
4 was no statement made that there was a direct refusal  
5 to provide interpreting services. It doesn't -- I  
6 don't think that this requires unique experience to be  
7 able to respond to.

8           Q. So an individual person could also engage in  
9 that type of analysis; correct?

10           MR. FRANTZEN: Object to form.

11           BY MS. GILBERT:

12           Q. An average person that's not an expert could  
13 also opine on number 1; is that correct?

14           MR. FRANTZEN: Object to form. You can go  
15 ahead and answer, Anna.

16           A. All right. I would say no, not an average  
17 person. An average person wouldn't know what they  
18 were looking for. An average person would have great  
19 difficulty following deposition testimony. An average  
20 person would not be familiar with policies and  
21 procedures for the hiring of interpreters. So I would  
22 say no, it's not something that an average person  
23 would have been able to do. But it's not something  
24 that requires -- other than the type of experience  
25 that I bring as a practitioner and as a service

1 provider and as a person who has given expert  
2 testimony before, it's not something that extends  
3 beyond the skill set that I bring. In other words, it  
4 would not take a specific type of degree to speak to  
5 this particular issue.

6 Q. Would it take any particular type of  
7 methodology to speak to that particular issue of  
8 number 1?

9 A. Well, I would the say the methodology would  
10 include having to be a critical thinker and the  
11 ability to be read and understand deposition testimony  
12 and to be able to garner an appreciation across  
13 multiple testimony to find patterns of consistency and  
14 inconsistency.

15 Q. Okay. Can you explain when you say the words  
16 "refuse to offer," I'm a little confused by that.  
17 Earlier in your deposition you said that you were  
18 hired to look at evidence of whether Fairview was  
19 expecting Priscilla Durand to interpret or forcing  
20 Priscilla Durand to interpret. And here in your  
21 report you use the words "refuse to offer." How does  
22 one refuse to offer?

23 A. That a request was made and was emphatically  
24 denied.

25 Q. Okay. So was it your conclusion that based

1 on your analysis of the evidence Fairview did not  
2 offer an interpreter or Fairview refused the request  
3 of an interpreter? Do you see the distinction there?

4 A. Well, I want to because I can see that you  
5 want to make the distinction. So can you restate  
6 that?

7 Q. Sure. I'm confused by number 1 because it  
8 says Fairview refused to offer. So I'm trying to  
9 understand if they -- if your conclusion that Fairview  
10 refused to provide an interpreter when there was a  
11 request or Fairview refused to offer an interpreter  
12 before there was a request, or is it both?

13 A. So semantically you just used the word  
14 provide for offer. And I would see in this particular  
15 context that those two words would be synonymous. So  
16 as I'm saying refused to offer an interpreter meaning  
17 refused to provide an interpreter.

18 Q. Did you have any understanding that Fairview  
19 offered an interpreter?

20 A. I had, again, offer and provide being  
21 synonymous in terms of how I was using them. I did  
22 have evidence that there was evidence that Fairview  
23 provided interpreters in at least two instances during  
24 the May 7th to 9th time period.

25 Q. So you're saying that it could be used

1 interchangeably that Fairview refused to provide  
2 interpreting services versus refused to offer;  
3 correct?

4 A. Yes.

5 Q. I just want to understand that. Okay.

6 And maybe it's a cultural thing between the  
7 North and the South. My understanding was offer is  
8 when you initiate the offer and the request hasn't  
9 been made yet versus a refusal to provide when the  
10 request has been posed; do you understand I think  
11 that's where the confusion was? Okay.

12 So going onto number 2, you understood that  
13 Fairview requested that you'll opine on whether the  
14 presence of interpreters mitigated the circumstances  
15 surrounding the communication issues that existed;  
16 correct? You believe they hired you to opine on  
17 number 2?

18 A. Again, they hired me to opine on the expert  
19 report. And in the expert report, Dr. Kegl made a  
20 statement that had interpreters been utilized, they  
21 would have been able to achieve what Priscilla was not  
22 able to achieve. And that -- and so embedded in what  
23 Dr. Kegl was talking about was the fact that the  
24 parents didn't understand because it was beyond  
25 Priscilla's ability to make them understand.

1           And so what I'm saying here is that there  
2 were that -- so in her report she's stating that  
3 interpreters would have mitigated the consequence of  
4 Priscilla's inability to interpret. But the evidence  
5 that was provided to me indicated that is not what  
6 happened, that the -- one of the critical junctures  
7 that is talked about in several of the depositions is  
8 this comfort care phrase that surfaced at a time when  
9 there was an interpreter present and that phrase is  
10 emphasized in several of the deposition reports and  
11 it's emphasized in Dr. Kegl's report. But when an  
12 interpreter was present and conveyed that information,  
13 it did not lead to an understanding on the part of the  
14 Durands.

15           Q. Okay. And we'll come back to that. Right  
16 now I'm trying to get an overview of what Fairview was  
17 hiring you to do in this rebuttal report. So then,  
18 again, with number 3, this was another -- this was a  
19 response to a conclusion that Judy Shepard-Kegl made  
20 in her report that you seemed to disagree with and you  
21 opine on essentially whether interpreters could have  
22 been provided whether or not that was reasonable or  
23 feasible for Fairview; is that a fair way of  
24 summarizing it? Or why don't you summarize it?

25           A. Yes. In the report, in Dr. Kegl's report,

1 she is stating that interpreters were requested  
2 repeatedly and were not provided. And so I found no  
3 reference to that in other testimony that was provided  
4 in deposition or in any of the other records. And so  
5 this particular piece relates to the broader issue of  
6 why there may -- why there were delays in interpreters  
7 arriving and why in some instances when interpreters  
8 may have or were requested, they did not show up. And  
9 so the -- so I just addressed the broader issue of the  
10 complexity of providing interpreters in medical  
11 situations.

12 Q. Okay. Do you believe that you were hired by  
13 Fairview that the purpose of your expert was -- of the  
14 report was to determine if there were facts to prove a  
15 communication was affected or not affected?

16 MR. FRANTZEN: Object to the form of the  
17 question, but you can go ahead and answer, Anna, if  
18 you understand it.

19 A. I believe that I was hired by the hospital to  
20 address discrepancies in areas where I had differences  
21 of opinion in Dr. Kegl's report. And -- yeah. That's  
22 what I did.

23 Q. Do you believe that you were supposed to  
24 opine on if there were enough facts to determine if  
25 communication was effective or ineffective?

1           A. When you say communication, are you talking  
2 about direct communication? Are you talking about  
3 interpreted communication?

4           Q. I'm talking about communication between  
5 healthcare providers and Roger and Linda Durand.

6           A. Okay. So if you could ask that again, I want  
7 to make sure that I'm understanding.

8           Q. Sure. Did you understand that you were hired  
9 to opine on facts that would determine if  
10 communication between healthcare providers and Roger  
11 and Linda Durand was effective or ineffective?

12          A. To the extent that issues related to that  
13 were tied to Dr. Kegl's report, yes.

14          Q. Did you understand that it was your role to  
15 determine if there had been a violation of the ADA?

16          A. No.

17          Q. Did you understand that your role was to  
18 determine if Fairview had refused to provide  
19 interpreters?

20          A. To the extent that that was stated as fact in  
21 Dr. Kegl's report and in my review of all the material  
22 available to me, that was not substantiated, yes.

23          Q. Did you understand that you were hired to  
24 opine on Fairview's ability to provide interpreters  
25 and whether or not it was an undue financial burden



1 for them?

2 A. The first part of your question, the  
3 provision of interpreting services, yes. There was no  
4 discussion at any time nor was there much by way of  
5 information that had anything to do with the cost of  
6 interpreters. So that was not ever a part of my  
7 consideration.

8 Q. Did you understand that there was an  
9 administrative burden of some kind that Fairview  
10 couldn't get access to interpreters on May 8th or 9th,  
11 2013?

12 A. The administrative burden was that there were  
13 delays in getting the interpreters there.

14 Q. And you understood it was your job to opine  
15 on if it was an administrative burden for them to  
16 provide interpreters on May 8th or 9th, 2013?

17 A. No. No. No. I didn't focus on whether it  
18 was an administrative burden that as part of the  
19 administration of provision of interpreting services  
20 that that reality existed was something that I noted.

21 Q. And just for the record, I assume that you  
22 weren't -- but I do have to get it on the record.  
23 Were you here in Minnesota May 7th through 9th, 2013?

24 A. No, I was not.

25 Q. Did you have any interview or interaction

1 with Lisa Harper or Missy Marsh at Fairview Health  
2 Services?

3 A. No. I don't know who those two individuals  
4 are. I don't think I know who those two individuals  
5 are.

6 Q. Did you ever speak with Craig Lynch or Diana  
7 Pennington at Fairview Health Services or perhaps read  
8 their deposition?

9 A. I definitely read the depositions. I did not  
10 have direct interaction with them.

11 Q. Okay. Did you speak with any interpreting  
12 agencies in Minnesota about the availability of  
13 interpreters in May of 2013?

14 A. No, I did not.

15 Q. Did you speak with any freelance interpreters  
16 about their availability in May of 2013 in Minnesota?

17 A. Not specifically related to this case. Have  
18 I had those discussions with interpreters in  
19 Minnesota? Yes. Have I had those discussions, for  
20 example, with people from University of  
21 St. Catherine's, yes, over the years. But did I as  
22 part of my preparation for this case, no.

23 Q. Did you meet or interview Carol Lenning or  
24 Ken Freitag, the sign language interpreters, that were  
25 present on May 8th and 9th for Roger and Linda Durand?

1 A. No, I did not.

2 Q. Did you have any video footage or opportunity  
3 to assess their sign language interpreting skills?

4 A. No, I did not.

5 Q. Did you ever meet Roger and Linda Durand in  
6 person?

7 A. Not in person, no.

8 Q. The only interaction you've had with them has  
9 been watching the video footage that was conducted in  
10 February 2016; correct?

11 A. I'm hesitant only because when I saw the  
12 Durands on film, Mr. Durand looked familiar to me. So  
13 I -- there may have been some social situation where I  
14 encountered him, but I can't recall what the specifics  
15 of that were -- what the specifics are. I just knew  
16 that when I saw his face that I had seen him before.

17 Q. Okay. And that very well may be. He went to  
18 Gallaudet University and whatnot. Okay.

19 When you say you've seen him, interacted with  
20 him, you don't have any specific memories of  
21 interacting within the last -- how many years would  
22 you say it's been?

23 A. I couldn't even venture an estimate. It's  
24 just that I knew that I had seen him before. And  
25 it -- the very limited recall I have is that it was

1 social, but no more than that.

2 Q. For you to determine if communication is  
3 working between an interpreter and a deaf person,  
4 really, I guess between a hearing person and a deaf  
5 person working through an interpreter, how do you  
6 assess if communication is happening appropriately?

7 A. Well, there are many ways that you can assess  
8 that. The most ideal is that you would have directly  
9 observed the interaction. But in this case, there  
10 were alternative ways to assess that. And so, for  
11 example, in the case of the comfort care there is the  
12 direct deposition testimony of the Durands that they  
13 did not understand that phrase. There is also during  
14 that what I -- for lack of a better term, that  
15 interaction that Dr. Kegl had with the parents that  
16 Priscilla was supposed to interpret, but then Dr. Kegl  
17 became very involved with, that concept of comfort  
18 care came up by both parents. And it came up at  
19 Dr. Kegl's urging.

20 And Mr. Durand spoke to the fact that he saw  
21 these two signs and he represents the two signs that  
22 he saw, which would be glossed as comfort take care  
23 of, right, so he signed comfort take care, and that he  
24 saw those words, but -- you know, he saw those signs,  
25 but he didn't understand the intent behind those

1 words, what they really meant.

2 So after a career of 45 years of teaching  
3 interpreting and being an interpreter, it's easy for  
4 me to project myself into that moment of interpreting  
5 and know that likely what transpired was the  
6 interpreter simply glossed those two signs without  
7 giving any contextualization for what that meant.

8 Ideally, if that interpreter had been  
9 prepared as a healthcare interpreter, that particular  
10 phrase would have been a red flag because it is unique  
11 to the healthcare setting and to that particular case.  
12 And so the interpreter would either have asked for  
13 additional information as to what that meant or they  
14 would have understood themselves what it meant and  
15 they would have provided the contextualization. But  
16 again -- so I can assess in that fashion as well.  
17 Both of the plaintiffs said that they did not  
18 understand. They -- Mr. Durand gave a rendition of  
19 the signs that he observed. So that's an indication  
20 that at least that part of what was interpreted was  
21 not effectively communicated.

22 Q. So it's your assessment that the interpreter  
23 was not competent or qualified in that particular  
24 situation?

25 A. No, that's not what I said. What I said is

1 that the interpreter in that moment failed to  
2 recognize -- it appears, based on what Mr. Durand  
3 says, failed to recognize that those -- that that  
4 particular phrase, comfort care, had a very specific  
5 and unique medical meaning in that situation.

6 Q. And isn't that also possible for hearing  
7 people to have that misunderstanding?

8 A. Absolutely. In fact, in Priscilla's  
9 deposition she indicated that when she heard the  
10 phrase, she did not really understand, you know -- she  
11 really didn't understand what it meant.

12 Q. Sure. Dr. Shepard-Kegl in her deposition  
13 last week said that -- and I'm just curious to know  
14 your feedback on this -- that over the course of  
15 hearing people being exposed to a variety of speakers,  
16 having meetings and discussions among one another  
17 hearing questions and answers, that over a period of  
18 several -- what she referred to as several hits or  
19 several exposures to that information, hearing it in  
20 different ways, an understanding is developed whereas  
21 with this situation with Roger and Linda Durand with  
22 very limited chunks of having access to communication,  
23 they didn't understand that. What would be your  
24 response to that?

25 A. My experience would tell me that when

1 interpreters gloss particular phrases and they never  
2 provide a contextualization, in other words, they  
3 present it more as literal English words without  
4 providing the context for the meaning, that even with  
5 the multiple hits, the meaning will not be understood.

6           So if I could give an illustration, some  
7 years ago I was asked to work with a school district  
8 where they wanted to assess the performance of the  
9 interpreting staff as well as whether the interpreting  
10 staff was a good fit for the children. And this was  
11 in a school district in Connecticut. And there was a  
12 young deaf teenager who continuously in his writing  
13 would write several words and he would then draw a  
14 line and then he'd write several more words and he'd  
15 write a line and he'd write several more words and  
16 he'd write a line. And everyone was very perplexed.  
17 So in this one example he had gotten a bicycle for his  
18 birthday and he was writing about his birthday gift of  
19 the bicycle and he'd use a few words and there would  
20 be a line.

21           And so in my interview with him, I asked him  
22 what the line represented and he signed this  
23 (indicating), which in -- one of the ways of  
24 presenting information through sign language where  
25 you're trying to represent English, this marker

1 represents i-n-g. And so I asked him, oh, so it means  
2 this, what does this mean. And he didn't know what it  
3 meant, but he knew it was important because the  
4 interpreter every so often was doing this, like  
5 walking, seeing, talking, ing, ing, ing.

6 Q. And just for the record, Ms. Witter-Merithew  
7 is using a gesture of her hand that is shaped with her  
8 fingers down and her pinky up, which is the sign for  
9 i-n-g, ing. Keep going.

10 A. Yes. And so I think the same -- that when  
11 that happened, it was very familiar to me. I have a  
12 lot of experience with deaf individuals who see a sign  
13 again and again and again and there -- they know that  
14 it's important and it has some meaning, but they may  
15 not know exactly what it means.

16 So another example was this time when parks  
17 and recreation was talking to a deaf person about  
18 accessibility and I was an interpreter in that  
19 instance. And I was signing this sign for  
20 accessibility and the deaf gentleman at one point  
21 became very frustrated. He said I understand that I  
22 can come into this place, but I want to know about  
23 getting interpreters. So this way of glossing  
24 accessibility, which is fairly common among  
25 interpreters, did not equate to what he was talking



1 about in terms of gaining access.

2 So I would not agree that hits alone would  
3 equate to understanding. If there is not manipulation  
4 of the language, if there's not -- the information is  
5 not presented in alternative ways or ways that are  
6 more common to the way deaf people use semantics, then  
7 misunderstandings could continue for long periods of  
8 time.

9 Q. You understand from the record that there was  
10 about an hour long meeting on May 8th before an  
11 interpreter got there, correct, with all the family  
12 and friends?

13 A. That sounds vaguely familiar, but I'd have to  
14 go back and look at the material to know what the  
15 length of the meeting was. I do know that there  
16 was -- before the parents arrived? We're talking  
17 about the 8th.

18 Q. No. There was a meeting while the parents  
19 were there on May 8th for about an hour --

20 A. Yes.

21 Q. -- without an interpreter where the parents  
22 sat in the room with everybody else. Then there was a  
23 second meeting on May 9, for about an hour with  
24 Dr. Malik and Amy Klopp before the interpreter  
25 arrived. Okay. So there were two care conferences or

1 family meetings. There were no interpreters for these  
2 hour long meetings each time, but somehow there was an  
3 understanding among the hearing people of what comfort  
4 care was and meant. There were questions being asked.  
5 There were answers to their questions from the  
6 healthcare providers.

7 Then an interpreter came and interpreted  
8 separately from the family. It was just the  
9 healthcare provider and Roger and Linda Durand for  
10 about 15 minutes. Then on day a two similar situation  
11 happened with different a interpreter. And what  
12 Dr. Shepard-Kegl was saying is that having these  
13 interactions with interpreters where you get a variety  
14 of speakers asking questions and a variety of people  
15 providing explanations, that allows for the  
16 interpreter also to expand and explain terms that may  
17 not be otherwise understood whether it's sign language  
18 or English. Do you follow me so far?

19 A. Oh, yes, I follow you. I just find what  
20 you're saying inconsistent with Priscilla's deposition  
21 testimony where she says that in those meetings she  
22 did not ask questions and that she left those meetings  
23 not understanding herself what comfort care meant.  
24 So -- yeah.

25 Q. Okay. I guess you and I are referring to

1 different parts of the record because I'm not familiar  
2 with that. I'm asking you Dr. Shepard-Kegl -- I'm  
3 asking you to opine on Dr. Shepard-Kegl's conclusions  
4 that these meetings occurred, there were questions  
5 being asked, and a variety of people were speaking and  
6 communicating. And had interpreters been present  
7 during those, that would have allowed for Roger and  
8 Linda Durand to have better access to communication.  
9 Okay.

10 Then she's saying on day two, the more a  
11 family is exposed to information over a period of time  
12 in their language that they understand best, they're  
13 able to develop an understanding. Do you agree with  
14 that?

15 A. I would say generally that would seem to be  
16 what should happen, yes.

17 Q. But in this case you don't think that was  
18 possible for the Durands?

19 A. Well, I'm not sure that we're sharing a  
20 common understanding of what happened in those  
21 meetings, number one, and so I don't want to agree to  
22 something that might be misleading. And so, yeah, I'm  
23 not sure we share a common understanding because my  
24 understanding is that on one of the days the  
25 interpreters were there before the parents arrived and

1 that in Mr. Durand's testimony, you know, he talks  
2 about that the interpreter was there and they got  
3 there late. And so, you know, you're talking about  
4 interpreters not being there, but at least on one  
5 occasion, which I believe was that first day, I  
6 believe on the 8th, that the interpreter was there and  
7 the parents came late. And so, yeah, I'm hesitant to  
8 agree that that's what would have happened  
9 particularly if the parents arrived late and they're a  
10 little unsettled about that and so then they're just  
11 trying to play catch up and they are a little bit  
12 distracted coming into the process.

13 And on the other hand, if, in fact, the  
14 interpreter -- I do agree with the point that you're  
15 making that interpretations can unfold over time. You  
16 know, certainly in my own work as an interpreter,  
17 there have been instances where my understanding of  
18 the content improves with time, and so my ability to  
19 anchor the information more clearly is available.

20 But if that is what happened in this case,  
21 then it would be that if the interpreter had been  
22 present for that -- you would expect that then the  
23 interpreter would then bring that into their  
24 interpretation when the Kegls -- I mean when --

25 Q. Durands?

1 A. Yeah, when the Durands arrived. Yeah. So --

2 Q. Okay. Did you have an opportunity to assess  
3 Roger Durand's language, whether English or sign  
4 language?

5 A. Well, I didn't really focus on replicating  
6 Dr. Kegl's assessment. I reviewed her report while I  
7 observed his language use and I found her comments  
8 about his language use overall accurate.

9 Q. Would that also be true for Linda Durand?

10 A. Yes.

11 Q. What about Priscilla Durand?

12 A. Yes.

13 Q. It's about 11:00. Do you want to take a  
14 short break?

15 A. Sure. That would be great.

16 MS. GILBERT: Let's go off the record.

17 (Recess taken from 11:56 a.m. until 12:04 p.m.)

18 BY MS. GILBERT:

19 Q. We were talking about your ability to assess  
20 or opportunity to assess Roger and Linda Durand's  
21 language, you didn't have a chance to assess them, but  
22 you didn't see that as being an issue, and you have  
23 agreement with Judy Shepard-Kegl for the most part, I  
24 think is what you said, regarding their language  
25 abilities; is that correct?

1 A. Yes.

2 Q. Did you have any -- were there any places  
3 where you disagreed with Judy Shepard-Kegl's  
4 description regarding Roger or Linda?

5 A. No, not that I recall.

6 Q. Did you agree with her conclusions that she  
7 made about their cognitive aptitude for language  
8 proficiency?

9 A. I don't -- without referencing back  
10 specifically to that section of the report, I don't  
11 remember exactly what it said, but I don't remember  
12 having any disagreement with anything she said about  
13 the CALP.

14 Q. So your specific disagreement is about Roger  
15 and Linda Durand's ability to understand implicit and  
16 explicit information; correct?

17 A. No. My disagreement is whether or not -- is  
18 with whether or not having interpreters there would  
19 have changed their ability to understand implicitly  
20 what was meant by comfort care.

21 Q. So I just want to understand this because  
22 it's a little different than what's in your report.  
23 If there were interpreters there over the period of  
24 two days, you don't think Roger and Linda Durand would  
25 have understood comfort care; is that correct?

1           A. I don't know if they would have or not based  
2 on the evidence that was available to me.

3           Q. Okay. So you're not drawing the conclusion  
4 that if interpreters were there over the period of  
5 two days, that they would or would not have been able  
6 to understand comfort care, you're not drawing that  
7 conclusion one way or the other?

8           A. Only to the extent that having had  
9 interpreters there over two days would not necessarily  
10 have guaranteed that they would have understood the  
11 implicit information. And I say that because  
12 Priscilla was there for all of that time and she was  
13 present for all of those sessions, and yet she  
14 testified that she didn't fully understand what was  
15 meant by comfort care and she didn't understand the  
16 implication of or just how impending or serious  
17 Shaun's situation was until the nurse changed the  
18 medication later on the 9th. And that's when it  
19 really hit her how serious it was.

20           So given that having been there all of that  
21 time did not change Priscilla's understanding as  
22 someone trained in the medical field and someone who  
23 was present for all of those meetings, having had  
24 interpreters there for all of that time may not  
25 necessarily have yielded anything different for the

1 Durands.

2 Q. Do you believe that Fairview should have had  
3 interpreters available for the Durands on May 8th and  
4 9th to a greater degree?

5 A. What I understood -- it seems that it would  
6 have been very hard to make a determination because  
7 they weren't directly involved in the communication  
8 that was going on. And Mr. Durand talked about in his  
9 deposition that they were coming and going, that they  
10 were in the room some of the time, that they weren't  
11 in the room some of the times, that they left and went  
12 back and forth several times to home, that they left  
13 and went and got something to eat and came back. And  
14 so I think it would have been very hard to predict  
15 when interpreters should have been there because their  
16 role was intermittent and their role in the decision  
17 making was relatively nonexistent.

18 Q. Roger and Linda Durand testified that they  
19 were present at the hospital from about 1:00 on  
20 May 8th and were there all night and were present  
21 until about 3:00 on May 9th. They were there for  
22 about 26 hours. So I'm just presenting that to you  
23 that that is what is in the record. I'm asking you if  
24 Fairview Health Services should have had interpreters  
25 present more than the two portions of time that they



1 had interpreters present, in your opinion?

2 A. First of all, I really don't mean to disagree  
3 with you. I'm only speaking from the information that  
4 I was provided. In the record that I was provided,  
5 Mr. Durand did not stay all night on the night of the  
6 8th. He left and returned home. It was only  
7 Mrs. Durand who stayed overnight. And that Mr. Durand  
8 was not there on the 9th. He actually went to work  
9 that day.

10 And so I'm just saying that the information  
11 that I had available, which includes his deposition  
12 testimony, differs from what you said is the fact. So  
13 that's -- I just want you to be clear that's where I'm  
14 coming from is the information I was provided.

15 In terms of whether or not the hospital  
16 should have had them there, I do not personally view  
17 that there was any specific reason to have had  
18 interpreters there when the hospital believed that it  
19 was necessary to have interpreters there to  
20 communicate with the family at those junctures where  
21 they felt that it was important. They made a request  
22 for interpreters.

23 Q. Okay. So when Mr. and Mrs. Durand -- when  
24 there was an initial request made by Priscilla before  
25 the family arrived and then another request made by

1 Linda Durand when she arrived, you don't agree that  
2 Fairview should have had an interpreter there for  
3 those communications on May 8th?

4 A. Yeah, I'm struggling only because what you  
5 indicate happened in terms of requests, I just -- I'm  
6 not able to substantiate in the information I was  
7 given. So I would say that if, in fact, requests were  
8 made, my observation is the hospital filled requests  
9 to the best of their ability. Where the interpreters  
10 appeared to be delayed, but it wasn't -- they weren't  
11 delayed because there was a failure to request the  
12 interpreter. That's why I am of the opinion that the  
13 issues that are present in this matter far exceed  
14 Fairview's capacity to resolve. There are issues that  
15 impact our field and -- as a whole.

16 Q. So is it your understanding that Fairview  
17 didn't know that there was a need for interpreters for  
18 communications with healthcare providers?

19 A. I'm not following your question.

20 Q. Is it your understanding that a request was  
21 made for an interpreter, Fairview put in the request,  
22 and that because there's a shortage of interpreters,  
23 they couldn't meet that need; is that what your  
24 understanding is?

25 A. My understanding is that there's question as

1 to whether or not there was actually a request made or  
2 Amy Klopp made the decision that interpreters should  
3 be present. She testified that she did not have  
4 direct recall as to whether or not she made the  
5 determination to engage the interpreters or she was  
6 specifically asked to do that.

7 So you have different individuals that were  
8 involved in the event with different perspectives.  
9 But, regardless, a request for interpreters was made  
10 on the 8th and a request for interpreters was made on  
11 the 9th. That is consistent with the Epic -- is it  
12 the Epic system? I think they refer to it as the Epic  
13 system documentation that was made available to me.  
14 You can see that those requests, you know, were made.  
15 And so whether whoever the request came from, however  
16 the request got made, it got made. And there -- and  
17 the time the request was made until the interpreters  
18 arrived, there was a delay. I don't know what the  
19 cause of that delay is beyond the contract reference  
20 that says that in 80 percent of the instances they'll  
21 have an interpreter there in an hour and in 100  
22 percent, they'll have an interpreter there in  
23 two hours.

24 So, clearly, the system was aware that  
25 there -- or the service providers that were filling

1 the request to send interpreters had established a  
2 practice that there was going to be a delay between  
3 requesting interpreters and interpreters arriving.

4 Q. So you have the position that Fairview knew  
5 that there was a need for sign language interpreters  
6 and that they made efforts to provide interpreters?

7 A. It is my position that it's -- that there are  
8 inconsistencies around -- that there's not a common  
9 response to how the interpreters got there. The  
10 Durand family says they made the request, the hospital  
11 personnel indicates they're not sure if the request  
12 was actually ever made or whether they determined to  
13 include the interpreter.

14 Q. Okay. So let's go to page 12 of your report.  
15 About the first paragraph under Roman Numeral 5, the  
16 last sentence of your report you say, "As a result of  
17 these type of inconsistencies, Fairview Ridge  
18 Hospitals would benefit from a thorough review of the  
19 policies and procedures used for creating access to  
20 deaf individuals seeking access to the hospital's  
21 program and services." Did I read that correctly?

22 A. Yes, you did.

23 Q. So my first question is: what  
24 inconsistencies are you referring to in this  
25 statement?

1           A. Yeah. So in -- across several of the staff  
2 deposition testimony there are -- there were  
3 inconsistencies in what certain abbreviations mean  
4 within the record in terms of the interpreter requests  
5 and what is meant by whether the assignment has been  
6 filled or it will be filled or who actually put the  
7 information into the database or whether the database  
8 was -- if the information was placed into the database  
9 by a healthcare provider or the interpreting  
10 department. So whether there was a call involved, you  
11 know. So there were -- there were just  
12 inconsistencies in how the process was activated. And  
13 so anytime when something rises to a level of  
14 conflict, for lack of a better term as it has in this  
15 case, it provides an opportunity for the system to  
16 take a step back and to make sure that its policies  
17 and procedures are effective, that the staff has been  
18 sufficiently trained, that the contracts that they  
19 have with service providers are being fulfilled within  
20 the time frames that everyone has committed to,  
21 et cetera.

22           Q. So that's a little bit different than what  
23 you say are the inconsistencies in your report here in  
24 that paragraph. The inconsistencies you refer to in  
25 the paragraph are about sometimes interpreters being

1 provided but not consistently, interpreters were  
2 inconsistent, the times that there was an intention to  
3 have an interpreter and it was documented, but  
4 engagement was not evident?

5 A. Right. So I'm speaking to --

6 Q. What are you speaking about?

7 A. I'm speaking to -- in the record, there  
8 were -- in Mr. -- I believe his name is Lynch. In  
9 Mr. Lynch, the operation supervisor of interpreter  
10 services deposition, there were questions about  
11 arrival times of interpreters, how long the  
12 interpreters actually stayed, the use of staff  
13 interpreters versus contracted interpreters, the use  
14 of one interpreter in particular who was considered  
15 both a lead interpreter, staff interpreter, but also  
16 did contract work for the hospital. And so, again, it  
17 goes back to the inconsistencies in the record about,  
18 you know, was an interpreter provided, when did they  
19 arrive, when did they leave, how long were they  
20 actually there, who made the request, how did the  
21 request get documented. That's what I'm talking about  
22 in that paragraph.

23 Q. So what did you observe as far as an  
24 intention to have an interpreter, but no interpreter  
25 was engaged?

1           A. Yeah. So I'm thinking specifically of the  
2 testimony Amy Klopp who talked about her full  
3 intention to have an interpreter there when the family  
4 met together or when the parents were going to come  
5 and, yet, the interpreter was not there at the start  
6 of the meeting. Ms. Klopp testifies that there really  
7 wasn't much discussion that transpired before the  
8 parents got there and they waited until the  
9 interpreter arrived. So there was an intention that  
10 the interpreter would be there at the start of the  
11 meeting, but there wasn't an interpreter there at the  
12 start of the meeting.

13           Q. And then you said the availability of the  
14 interpreters was inconsistent and you say these types  
15 of -- because of these types of inconsistencies,  
16 Fairview would benefit from review of the policies and  
17 procedures used to create access to deaf individuals.  
18 So how do those two things go together? I thought the  
19 availability was because of a shortage.

20           A. What part are you specifically referring to?

21           Q. About the third sentence into your paragraph  
22 here it says, "and, the availability of interpreters  
23 was inconsistent."

24           A. Yes.

25           Q. And then you go on to name two more

1 inconsistencies. And then sort of your conclusory  
2 statement here, "As a result of these type of  
3 inconsistencies, Fairview would benefit from a review  
4 of the policies and procedures used for creating  
5 access to deaf individuals." And I'm curious to  
6 understand how the availability of interpreters being  
7 inconsistent relates to their policies and procedures  
8 needing to be reviewed?

9 A. And so part of the policies and procedures  
10 has to do with making contact with the agencies that  
11 they have under contract. So the policies and  
12 procedures are supported by these contracts. And in  
13 the contract there are certain time frames that have  
14 been designated. And so a review of whether or not  
15 those time frames, in fact, are being honored, that  
16 interpreters are showing up 80 percent of the time  
17 within an hour or they're showing up 100 percent of  
18 the time within two hours is worth a view because  
19 there continue to be delays between requesting the  
20 interpreter and the interpreters actually arriving.

21 Q. So is it your understanding that the  
22 inconsistencies here or the problem here that requires  
23 review of the policies stems from the scheduling  
24 office contacting the interpreters or does it stem  
25 from the healthcare providers putting in the request



1 to the scheduling office at Fairview?

2 A. I'm not sure -- entirely sure. It would seem  
3 to me that if there's a contract in place and the  
4 contract stipulates that the interpreter 80 percent of  
5 the time has to be there within an hour, then the  
6 front line staff who are requesting the interpreters  
7 should be made well aware of that so that they can  
8 plan accordingly for meetings and/or inform the  
9 individuals that they're working with we've put in a  
10 request, but that request is not likely to be filled  
11 by.

12 Now, what -- there are times when there were  
13 a couple of examples of they put the request in, for  
14 example, at 10:30 in the morning and they got  
15 confirmation shortly after they put the request in,  
16 but the interpreter wasn't going to be there until  
17 noon or shortly after noon, right. And then -- but  
18 then the record is inconsistent. Did the interpreter  
19 actually arrive at noon because then they're talking  
20 about the meeting not starting with the interpreter  
21 until later, like 12:15 or 12:20. So was the  
22 interpreter delayed beyond noon? So that's the type  
23 of stuff that I'm talking about is that how all of the  
24 pieces fit together contains inconsistencies. And so  
25 a review of that to make sure that everyone is trained

1 and nows what to expect. And if these delays are  
2 built into the system, then those delays need to be  
3 communicated, and meetings should be set around that.

4 Q. When you say meetings, what do you mean by  
5 that?

6 A. Well, for example, the family care meetings,  
7 you know, or the -- the care meetings that included  
8 the family and healthcare personnel.

9 Q. Are there any other issues or concerns that  
10 you saw within the Fairview Ridges Hospital policies  
11 and procedures?

12 A. Not that specifically come to mind.

13 Q. Okay. Did you have an understanding that  
14 Fairview staff understood the obligation to provide  
15 interpreters for family members?

16 A. I'm not sure.

17 Q. Why are you not sure?

18 A. Because it's been some weeks since I've  
19 looked at the deposition testimony. I know that at  
20 least with Amy Klopp that there was an absolute  
21 intention to make sure that the parents were involved  
22 in those care meetings and that request for  
23 interpreters were made. So how that relates to what  
24 she understood about including family members, I'm not  
25 sure. I'd have to go back and look at her testimony

1 more closely.

2 Q. Just as an aside, are you aware that Fairview  
3 had staff sign language interpreters?

4 A. Yes.

5 Q. And are you aware that they had on-call  
6 casual interpreters separate from the agency  
7 interpreters?

8 A. Yes. But it was -- through everything that I  
9 read, it was other than one reference to a time when  
10 one of those staff interpreters took an assignment,  
11 there was no discussion, no foundation was provided as  
12 to how those interpreters -- why they weren't  
13 available, why they, you know, weren't involved. I  
14 didn't have much to refer to regarding them. But  
15 reference to the fact that they were a part of the  
16 overall schema was present in the information.

17 Q. You mentioned that you reviewed the Fairview  
18 Health Services policies and procedures. I know there  
19 are several. But did you see anything in those  
20 policies and procedures about Fairview's obligation to  
21 offer interpreters to patients and family members?

22 A. I don't recall.

23 Q. Okay. Do you have an understanding that the  
24 healthcare facility should offer sign language  
25 interpreters when they see that there's a need for

1 interpreting?

2 MR. FRANTZEN: I'm going to object to the  
3 form of the question with respect to the meaning of  
4 the word "offer."

5 A. And so, yeah, again I think we're at that  
6 same point in terms of the semantics, what is meant by  
7 offer versus provide. And so that they had an  
8 obligation to provide interpreters, I would -- my  
9 understanding of the policy is that there has to be a  
10 request. And so the -- if what you are meaning by  
11 offer meaning that would you like to have an  
12 interpreter, would you like to have an interpreter.  
13 That, I'm not sure about whether that is part of their  
14 obligation or not legally part of their obligation.

15 Q. Do you understand that to be a standard  
16 practice to ask if a patient or family member needs an  
17 interpreter or if that's maybe RID's position on  
18 healthcare interpreting, that the healthcare provider  
19 would initiate the offer or initiate the proposal to  
20 have interpreters?

21 A. When you say best practice, to me, best  
22 practice means that has been documented after research  
23 and review, and so I would say it's not a best  
24 practice. It may possibly be a promising practice in  
25 Minnesota. It may be a promising practice in

1 Minnesota. I would say it's not an established  
2 practice nationwide. And I have seen nothing by way  
3 of RID publications that advocates for that particular  
4 expectation.

5 Q. So you've seen nothing as far as RID's  
6 standard practice with healthcare interpreting that  
7 would suggest that healthcare providers once they  
8 observe that there are signing patients or family  
9 members, that they should initiate the offer or the  
10 proposal to have a sign language interpreter; is that  
11 your testimony?

12 A. I have -- I did not review the RID standard  
13 practice paper for -- I don't even know if there is a  
14 current standard practice for providing interpreters  
15 in healthcare settings. I didn't review it for this  
16 particular piece. I do know that in the deposition  
17 testimony and I believe that it was Julie Kahn's  
18 deposition testimony, that she indicated that an  
19 offer, at least at one point an offer had been made to  
20 provide interpreters, but it was declined.

21 Q. And in that situation you mean that -- just  
22 so we're clear on the word "offer," in that situation  
23 you're saying that somebody, a nurse or healthcare  
24 provider asked the Durands if an interpreter was  
25 needed and somebody said no?

1           A. My understanding is that it was asked of  
2 Shaun and that he said no, that his siblings would be  
3 interpreting.

4           Q. And that was Julie Kahn's deposition?

5           A. Yes. That was in Julie Kahn's deposition.

6           Q. Okay.

7           A. Oh, no, I'm sorry, let me take that back.  
8 Julie Kahn was testifying that this -- immediately  
9 upon Shaun's passing an offer was made as to whether  
10 or not they would like to have interpreters there and  
11 that offer was declined. It was in -- it was in one  
12 of the other healthcare -- one of the nursing staff's  
13 depositions that Shaun was asked and he declined. But  
14 I don't recall which deposition that was in. So there  
15 were at least two examples, two examples of healthcare  
16 -- a nursing staff member asking if interpreters would  
17 be needed and the service was declined.

18          Q. In page 12 of your statement that thorough  
19 review of policies and procedures would benefit  
20 Fairview, how would a thorough review benefit  
21 Fairview? What do you mean by that?

22          A. Fairview is a system and systems as an  
23 interpreter practitioner who has to interface with  
24 systems, I'm sensitive to the fact that systems have  
25 processes and procedures. They have structures and

1 they have personnel. And so when there are issues of  
2 this nature that come up, it would benefit the system  
3 in terms of its efficiency and effectiveness to take a  
4 step back and to look at each one of those things to  
5 make sure that the personnel are adequately trained,  
6 that the structures they have in place, which in this  
7 case would include those contracts with those  
8 agencies, are achieving what they're intended to  
9 achieve, that -- and that the procedures that are in  
10 place for requesting and securing interpreters are  
11 achieving the desired outcomes. So that's what I  
12 mean. They could benefit in terms of their efficiency  
13 and effectiveness by taking a step back. This gives  
14 them an opportunity to take a step back and look at  
15 those aspects of system -- of their system.

16 Q. So it your opinion that Fairview should have  
17 documented somewhere in a field that Shaun Durand's  
18 parents were deaf?

19 A. That could possibly be one option.

20 Q. Okay. And did you have a chance to read  
21 Dr. Doua Her's deposition testimony? Doua, D-o-u-a,  
22 Her, H-e-r. It's listed in your --

23 A. Can you refresh my memory as to what that  
24 person's role was in the system?

25 Q. Sure. Yeah. He was the hospitalist that

1 went up to pronounce that Shaun Durand was deceased.  
2 And my question is with regard to reviewing policies  
3 and procedures and documenting and all that as you've  
4 just been opining on, what your opinion would be about  
5 the fact that Dr. Doua Her did not know that Roger and  
6 Linda Durand were deaf, the parents of Shaun Durand,  
7 and that an interpreter may be needed, he did not read  
8 that in the chart before going up. Do you have any  
9 thoughts on if there is an inconsistency or a problem  
10 there in the policies and procedures or maybe that  
11 that's something should be reviewed?

12 A. That very possibly could be, but to be quite  
13 honest, I don't recall his deposition to that level of  
14 specificity.

15 Q. So if a doctor is not aware that the parents  
16 of somebody that's just died needs an interpreter,  
17 that doesn't come up in the medical chart, what are  
18 your thoughts there with regard to documentation?

19 A. Yeah, it would seem to benefit the system as  
20 a whole for all personnel to be aware of any type of  
21 dynamic like that that would impact process and  
22 procedure. So it would certainly make sense that a  
23 policy like that would be in place.

24 Q. And impact communication access?

25 A. Pardon?



1 Q. And also impact communication access?

2 A. So I feel you want me to say yes when you say  
3 it would impact. His knowledge of that may or may not  
4 have impacted, right. In other words, would he  
5 have -- would he have delayed going into the room  
6 until such time as an interpreter would have gotten  
7 there or that -- when you say communication access,  
8 I'm not sure what you're referring to.

9 Q. Sure. You made a list of factors that could  
10 be impacted if he had that knowledge --

11 A. Yes.

12 Q. -- and I am asking if communication access  
13 may also be impacted if he had that knowledge, that  
14 Shaun Durand's parents were deaf and that they use  
15 interpreters twice before during that two-day process?  
16 I'm just asking --

17 A. You're asking if it's a possibility -- you're  
18 asking if it's a possibility, if I'm understanding you  
19 correctly. And I would say --

20 Q. Your --

21 A. -- yes, that's a possibility.

22 Q. Right. Your list was having that knowledge  
23 would impact policies and procedures. And I'm also  
24 asking in that list of what it would impact if having  
25 that knowledge would also impact communication access

1 for his engagement with his parents, Shaun Durand's  
2 parents?

3 A. And --

4 Q. Having that knowledge.

5 A. Yes, it could impact that. I do not recall  
6 that that -- that he -- I do not recall what his  
7 activity was other than pronouncing, you know, the  
8 death. I don't know -- I don't recall what his level  
9 of activity was with the family.

10 Q. I didn't ask that. I'm just simply asking if  
11 he had that knowledge, if that had the potential to  
12 impact communication access, but I think I heard your  
13 answer.

14 A. Yes.

15 Q. Let's go to page 13 of your report. On this  
16 page, it talks a little about Priscilla Durand's  
17 conveying of information and it appears you disagree  
18 with Judy Shepard-Kegl regarding whether or not she  
19 interpreted. So starting with third paragraph down,  
20 the last sentence, but the third paragraph you say,  
21 yes, her explanation of what transpired in these  
22 instances is not interpreting, rather her explaining  
23 to her parents after the fact what had been  
24 communicated during an incident involving family  
25 members and hospital staff. And so I just want to ask

1 a little bit more about that so I understand your  
2 conclusion there. So you don't dispute that Priscilla  
3 couldn't keep up with doctors during simultaneous  
4 communication; correct?

5 A. Right.

6 Q. To interpret --

7 A. I don't dispute that.

8 Q. Okay. And how do you make that assessment  
9 based on your observation of Priscilla's interpreting?

10 A. That's correct. And I -- in her deposition  
11 testimony, there's no indication that she ever  
12 attempted to do that.

13 Q. Okay. And what is your understanding of  
14 consecutive interpreting, the difference between  
15 consecutive and simultaneous?

16 A. The difference between consecutive  
17 interpretation and simultaneous interpretation has to  
18 do with it's a process issue. So if I'm actually  
19 interpreting and I'm doing it consecutively, I help to  
20 set the intervals by which information is  
21 communicated. So let's say a doctor asks a question,  
22 I wait until I hear that entire question, I ask the  
23 doctor to pause, and then I render the interpretation.  
24 And then if there's a response or further comment from  
25 the doctor, I would again accept what my memory

1 capacity would allow me to accept, then pause, and  
2 then render the interpretation. So you do the  
3 interpretation in intervals rather than doing it  
4 simultaneously. Consecutive interpretation is viewed  
5 as a much more accurate form of interpretation than a  
6 simultaneous interpretation. The error rate in  
7 simultaneous interpretation tends to be greater than  
8 in consecutive if a person knows how to do consecutive  
9 interpretation. I don't believe that Priscilla Durand  
10 did either of those things. I don't think she did  
11 simultaneous or consecutive interpretation.

12 Q. I'm not there. I haven't asked that question  
13 yet. We'll get to that point. So with consecutive  
14 interpretation, what is your observation of somebody  
15 that has waited too long and attempting to produce  
16 consecutive -- produce information, but they their  
17 memory can't hold it all, what do you observe happens  
18 in the interpretation process?

19 A. Well, that there would be decay, and so  
20 information would deteriorate. Their ability to  
21 recall would be reduced.

22 Q. And also omissions?

23 A. Well, then I wouldn't call it true  
24 consecutive interpretation because the -- in what is  
25 real consecutive interpretation, the interpreter sets

1 the segments, you know, how much information they  
2 accepted at any point in time. So they would always  
3 be working within their memory capacity. If they went  
4 beyond that, then, yes, there would be omission, but  
5 there's also omission in simultaneous interpretation,  
6 and that was evident. Everything that Priscilla was  
7 asked to do by Dr. Kegl was simultaneous  
8 interpretation. There was no rendering of consecutive  
9 interpretation included in Dr. Kegl's samples with  
10 Priscilla.

11 Q. And is it your understanding that over the  
12 period of May 8th and 9th that Priscilla Durand was  
13 not attempting to convey the thought world of the  
14 healthcare providers to Roger and Linda Durand?

15 A. No. According to her testimony, she did  
16 that. She just didn't do that in the presence of  
17 those healthcare providers. According her testimony,  
18 she would intermittently -- both with hearing family  
19 members and with her parents, she would provide them  
20 with a summarization of, you know, what was going on,  
21 what was being talked about. And -- yeah.

22 Q. So they were the thought world of the  
23 healthcare providers, not Priscilla's own thoughts?

24 MR. FRANTZEN: Objection to the form.

25 A. She didn't address in her testimony whether

1 she was interpreting the thought world of the doctors.  
2 My perception of how she explained what she was doing  
3 was that she was interpreting her understanding of the  
4 information in her own words, not in their words. And  
5 she was doing the same with hearing family members and  
6 she was like the point of contact for everyone in the  
7 family.

8 In one of her reflection clips with Dr. Kegl,  
9 she says, you know, I don't really interpret, what I  
10 do is I wait and make sure that I understand what's  
11 going on, and then later I explain in my own words.  
12 And so what happens is that I oversimplify --  
13 sometimes I oversimplify because I'm using signs that  
14 I know. I'm using -- I'm talking about it in a way  
15 that I understand. And so that then also reinforces  
16 what's in her deposition testimony. I don't call that  
17 interpreting. I call that communicating. I call that  
18 the life of a bilingual, not interpreting.

19 Q. So you're saying that she's a bilingual?

20 A. I'm saying that she knows two languages, that  
21 she doesn't have equal fluency in the two languages  
22 that she works with, but that -- so I didn't say she  
23 was a competent bilingual. I said that she's a  
24 bilingual. She grew up observing her parents'  
25 communication. She grew up in a household she was

1 educated by her mom, you know, using sign language and  
2 her spoken language, she -- and, usually, one of the  
3 characteristics of a bilingual is that you receive  
4 some of your education or all of your education in  
5 that language. And so she did that unlike many other  
6 CODAs who only received their formal education through  
7 public schools. Priscilla received education from her  
8 mother in a home school situation for a number of  
9 years. So I would consider her a bilingual, not  
10 particularly -- she's not a balanced bilingual for  
11 sure.

12 Q. Your understanding or speculation is that  
13 Priscilla was sharing her own self-generated ideas and  
14 not the information that came from the generated ideas  
15 from the healthcare providers, is that distinction  
16 you're making between her interpreting versus her just  
17 trying to communicate with her parents?

18 A. Well, there are several things that  
19 contribute to it. It's more than just -- I don't  
20 think she was directly saying here's what he said,  
21 here's what she said. So there's -- I think she was  
22 taking the overall -- what she talks about is taking  
23 the overall gist, this is where we're at, this is  
24 what's going on, this is what's been decided, this is  
25 what they were talking about. And she puts them

1 into -- by her own testimony or her own statement, she  
2 put them into a way of communicating that she was  
3 comfortable in using in communicating ideas or  
4 information as she understood it.

5 The other factor is that when she was doing  
6 this was not at the time frame that those other  
7 individuals were in the same space as she was. That  
8 it was typically, according to her testimony,  
9 happening after they had been there, that she stayed  
10 focused on what was going on at the time, and then  
11 when they left, then she was doing it. And so  
12 there's, also, the time frame and the -- and what she  
13 was doing, those two things characterize it as  
14 communication versus interpretation.

15 Q. So you don't have any recollection of her  
16 speaking specifically about how Roger and Linda were  
17 in the room with doctors and they weren't able to  
18 understand what the doctors or healthcare providers  
19 were saying. And then the doctor, healthcare provider  
20 left and Priscilla had to convey that information?

21 A. Oh, yes. That's what I'm talking about in  
22 terms of the time frame. But I don't consider that  
23 interpretation. I consider that communication. And  
24 so --

25 Q. Okay.



1           A. -- what she was using was her signing  
2 capacity at that point, not -- it isn't -- she wasn't  
3 following an interpreting process. She was  
4 communicating to them directly after the fact her  
5 understanding of what had transpired. She was making  
6 the choices of the signs. And by her own statement in  
7 doing that, she oversimplified the information. So --  
8 yeah.

9           Q. If her parents could hear, would she have had  
10 to do that?

11           A. I don't know because she talked about doing  
12 the same thing for other family members. So I don't  
13 know. In Mr. Durand's deposition testimony, he talks  
14 about that, you know, they're coming and going in and  
15 out, that they were just on the periphery, that they  
16 really weren't involved, that they really didn't have  
17 any role there, they were just. He talks about the  
18 strained relationship and the fact that it had just  
19 recently -- there had been a little bit of a renewal.  
20 And so he appears to just be grateful that they were  
21 even allowed to be there. And so that they just were  
22 fine with whatever they were given because they didn't  
23 see their role there to be a part of the decision  
24 making.

25           And so he also talks about she would come up

1 and she would summarize what they were talking about  
2 and, you know, let them know pieces of information,  
3 and that he felt that that's what they -- given the  
4 circumstances, and he emphasizes those circumstances  
5 being the strained relationship that he had had with  
6 Shaun, given those circumstances, that that's all that  
7 he felt that was appropriate to expect.

8 Q. If an interpreter had been present, there  
9 would have been no need for Priscilla to have to go  
10 and convey that information; correct?

11 A. Yes. I have to admit I'm not clear what it  
12 would look like if an interpreter had been present  
13 because I -- I don't -- I wasn't there. And so I'm  
14 reading about there were lots of people in the room,  
15 that there, you know, people coming and going, that  
16 there was noise in the room. And so I don't know if  
17 the interpreter would have been able to even hear what  
18 was happening at the bedside. I don't know if they  
19 were supposed to have access to that information given  
20 that they weren't the healthcare proxy. Yeah, so I'm  
21 not sure what that would have looked like. But  
22 assuming that it was supposed to be that they get that  
23 information if an interpreter had been there, then I  
24 assume they would have gotten that information  
25 directly.

1 Q. What's your opinion about a CODA that's a  
2 healthcare proxy having that additional role to have  
3 to convey that information to her deaf parents when if  
4 an interpreter had been there, she wouldn't have  
5 otherwise had to do that? What's your opinion on  
6 that?

7 A. Well, I would say given that Priscilla always  
8 had to communicate with her parents in sign language,  
9 I don't think that this was any more unique. Had she  
10 been required to interpret, then that would have  
11 seemed to be a very different role that she was being  
12 cast into. But this role of communicating with all  
13 members of the family, deaf and not deaf, about what  
14 was happening, was part of her role that she had taken  
15 on in this process. So I don't think that in and of  
16 itself, the fact that afterwards -- I even think if  
17 there had been interpreters there, given what all of  
18 them talk about is their family dynamic, I think it's  
19 very likely the parents would have continued to  
20 interface with her and ask her more questions even  
21 after the interpreter left because that was just part  
22 of the family dynamic.

23 Q. So you don't see any additional challenge put  
24 on Priscilla Durand in that situation to have to  
25 convey the information from the doctors that would

1 have, otherwise, been conveyed if an interpreter had  
2 been present; correct?

3 A. I believe that what I'm saying is that as a  
4 bilingual meaning someone who used sign language with  
5 her parents anyway, I think she would have done some  
6 of that whether there was an interpreter there or not.  
7 That is the nature of their family dynamic. Priscilla  
8 testifies to going all the way back to December of  
9 '12 -- of 2012 when there was first some discussion  
10 about hospice or some type of home care for Shaun,  
11 even beginning then and up until the time that he  
12 passed, she talked about frequently going over to her  
13 parents' home and spending hours with them talking  
14 over things. And so, clearly, that was just -- her  
15 doing that was a part of the family dynamic. And it's  
16 what you do as bilinguals. If you live in a family  
17 where some people speak one language and some people  
18 speak another and you're constantly moving back and  
19 forth between the two languages.

20 So I see that particular -- because it was  
21 communication and not interpretation, I don't see it  
22 as being an extra burden. I think it's part of the  
23 way that family operated. Had she been required to  
24 interpret, I think that would have been very  
25 different.

1 Q. You think things would have been easier on  
2 her at all if an interpreter had been there the whole  
3 time?

4 MR. FRANTZEN: I'll object to form and  
5 speculation and foundation.

6 MS. GILBERT: She can speculate, she's an  
7 expert witness.

8 A. I can't imagine that there's much of anything  
9 that would have reduced the agony she must have been  
10 going through.

11 Q. And I'm not talking about the loss of her  
12 brother and those things. I'm asking you if you think  
13 it would have been easier on her if she had had an  
14 interpreter there for those two days to deal with the  
15 communication with her parents?

16 MR. FRANTZEN: Same objections.

17 A. And I don't feel that I can answer that  
18 because given what I know myself as a CODA in my own  
19 experience and working with other CODAs, even with an  
20 interpreter there, I believe that she would have been  
21 engaged in ongoing conversation with her parents about  
22 what was going on. So I don't know if the interpreter  
23 would have brought relief to her or not, I don't know.

24 Q. Are you a member of the International CODA  
25 Association?

1           A. No, I'm not. I'm very familiar with the  
2 organization, but I'm not active in the organization.

3           Q. Do you meet together with other CODAs?

4           A. I have -- I'm not much of a joiner. Although  
5 it may not appear that way now, I'm really pretty much  
6 of an introvert. And so I like my relationships in  
7 small group or one on one. And so I have CODA  
8 friends. And, of course, I'm very close to my sisters  
9 and they're both CODAs, and we're close to other  
10 CODAs, both CODAs who can hear and also individuals  
11 who are deaf themselves who have deaf parents and we  
12 share lots of common experiences.

13           Q. So you wouldn't be able to speak on behalf of  
14 representing CODAs, that having an interpreter present  
15 in a medical situation would provide some relief to  
16 you so you have less of a burden to convey  
17 information, you wouldn't be able to speak to that?

18           A. I think that we're still back to defining the  
19 difference between communication and interpreting.  
20 Absolutely, I can speak from my own experience as a  
21 CODA and the experience of other CODAs with whom I'm  
22 connected that if we were -- that having an  
23 interpreter present so that we didn't have to  
24 interpret in a medical situation would absolutely have  
25 provided relief.

1           But we also -- you could talk to any number  
2 of us who would say that if -- that once that  
3 interpreting assignment was done with the interpreter  
4 there, as soon as we would walk out to the car with  
5 our deaf parent, there would be engagement around what  
6 happened, what was talking about, what does this  
7 really mean. And there would still exist, again it  
8 depends on your relationship with your parents, but  
9 there would still exist some expectation that the CODA  
10 that is engaged with the parents helps to -- becomes  
11 part of the family memory, right. So what exactly did  
12 the doctor say, how often am I supposed to take this,  
13 what does this mean, you know. Yeah. So relief in  
14 the moment, but not relief long-term necessarily.

15           Q. Okay. So relief in the moment, what is the  
16 relief in the moment that it provides to you to have  
17 an interpreter present in that moment as opposed to  
18 you having the burden to interpret?

19           A. So as I'm answering this, I want to be clear  
20 that I don't believe that she was interpreting in the  
21 moment. But where I think the relief would come in,  
22 if I were in that situation and there was an  
23 expectation or the times where I have interpreted,  
24 it -- the challenge is listening to it as the family  
25 support member, right, and understanding this

1 information because I have to use it myself later, you  
2 know, in the -- again, I'm going back to my personal  
3 experience and caring for elderly parents. And in the  
4 latter years of my father's life, he was very ill and  
5 had to take a lot of different medications. And so  
6 being there to hear that information as the person  
7 who's going to help him take his medications every day  
8 versus having to be there and interpret that, that's  
9 huge. Having the interpreter there would be huge.  
10 Because then I'm free to just be there as my father's  
11 daughter.

12 In this particular case, the parents weren't  
13 the patients. Shaun was the patient. And so her  
14 focus was on Shaun, not necessarily on her parents,  
15 but there was the need to interface with her parents  
16 after the fact.

17 Q. Right. Let's go to page 14 of your report.  
18 First paragraph halfway down, this is now sort of  
19 getting into the whole lip reading assessment. And  
20 you said that "A deaf person will be more capable of  
21 lip reading the speech of a family member or someone  
22 with whom they are familiar and share a common frame  
23 of reference than someone who is a stranger. So given  
24 that this style of communication was central to the  
25 long-standing family communication dynamic, it



1 appeared to work." Did I read that correctly?

2 A. Yes.

3 Q. So is that an expert conclusion or opinion of  
4 yours or is that just an observation?

5 A. No. This is -- it's based on the testimony  
6 of Linda and Priscilla where both of them talk about  
7 mouth movements and mouthing the words. And, you  
8 know, Priscilla talks about using a combination of  
9 signs and spoken language to communicate with her  
10 parents. In the videos where she's interfacing with  
11 her parents and Dr. Kegl, the limited amount that she  
12 actually did get to interpret, she's incorporating  
13 some of that same kind of behavior and she talks about  
14 it in her deposition and so doesn't her mother.

15 And so when I look at that along with the  
16 profile that Dr. Kegl developed about the speech  
17 reading capacity of the parents, it makes sense that  
18 that way of communicating would be more successful in  
19 -- between individuals that were familiar with each  
20 other, which they all were. In the --

21 Q. So is this a question or an observation? I'm  
22 just trying to understand if this is part of your  
23 expert conclusion.

24 A. Yes. I would say it's part of my expert  
25 conclusion.

1 Q. Okay. Did you use any specific scientific  
2 methodology to draw this conclusion?

3 A. No. I used the results of Dr. Kegl's  
4 analysis of their lip reading capacity and the  
5 deposition testimony of Linda and Priscilla and the  
6 reflections statements made by Priscilla to Dr. Kegl  
7 and my observation of the way Priscilla was  
8 interfacing with her parents during that limited  
9 interaction where she was supposed to be interpreting  
10 for them.

11 Q. Okay. But this conclusion that you made that  
12 it appeared to work, you're referencing a time in  
13 history, May 8th and 9th, 2013, that's what you're  
14 talking about that the -- that the communication  
15 interaction on May 8th or 9th by reading Priscilla's  
16 lists appear to work, is that your conclusion? I just  
17 want to make sure I understand this paragraph here.

18 A. Well, so this is a general observation. I  
19 didn't restrict it to what was happening on the 7th,  
20 8th, or 9th. I'm addressing that the speech reading  
21 is influenced by the content of the conversation and  
22 how well people know each other.

23 Q. Okay.

24 A. I don't think that's really any different  
25 than what Dr. Kegl was saying. Yeah.

1 Q. The way I read that sentence, "Given the  
2 style of communication was central to the  
3 long-standing family communication dynamic, it  
4 appeared to work." It gives the impression that  
5 you're referring to the communications between  
6 Priscilla Durand and Roger and Linda May 7th, 8th, and  
7 9th, 2013, but you're saying now that this is a  
8 general observation of how their communication worked  
9 presently with one another; is that what you're  
10 saying?

11 A. Over time. How it had worked over time.  
12 Because that's what the deposition testimony from  
13 Linda and Priscilla was not limited to just the 7th,  
14 8th, and 9th. It was over the course of Shaun's  
15 illness and encompassed all the way back -- well,  
16 really, there was some reference to over years and  
17 then specifically back to December of 2012 and  
18 forward.

19 Q. Okay. Later on on page 14 you say that at  
20 the very bottom paragraph, "what these many  
21 inconsistencies demonstrate is a shared responsibility  
22 for the alleged failure of effective and appropriate  
23 inclusion and access through Linda and Roger Durand."

24 A. Uh-huh.

25 Q. Can you explain what you mean by shared

1 responsibility?

2 A. So leading up to this, I talked about what  
3 appears to be a very hands-off, detached, I believe I  
4 used the word passive engagement of the parents in the  
5 process. As well, Priscilla seemed to vacillate back  
6 and forth between when she communicated, how she felt  
7 about communicating. Sometimes she made it appear  
8 that communication was very easy. Other times, you  
9 know, like when she spent these hours talking with  
10 them about his healthcare, it seemed to go -- she gave  
11 an indication that they all were able to talk about  
12 this information in quite a bit of detail. And then  
13 other times she would imply that she couldn't  
14 communicate with them very well at all.

15 And so I'm saying that between them as a  
16 family unit their shared responsibility for the fact  
17 that things did not -- things were not working well.  
18 The parents didn't assert their request in a clear and  
19 consistent way, particularly Mr. Durand. And when  
20 there was opportunity to ask questions, they didn't  
21 ask questions, and that is all of them. Priscilla  
22 didn't ask questions and neither Linda or Roger asked  
23 questions.

24 And so they share in the responsibility for  
25 their perception that things did not go well. They're

1 attempting to say the system failed them. And it's my  
2 observation that they failed themselves. To some  
3 degree, they failed themselves.

4 Q. So shared responsibility, you're not  
5 referring to between the hospital and the Durands,  
6 you're talking about the Durand family having that  
7 shared responsibility?

8 A. Yes. And I believe that that's supported by  
9 the rest of what's in that paragraph.

10 Q. I'm just trying to clarify.

11 A. Uh-huh.

12 Q. So the shared responsibility was among the  
13 family members and there wasn't a responsibility of  
14 the hospital, in your opinion, for the alleged failure  
15 of effective and appropriate inclusion and access  
16 through Linda and Roger Durand?

17 A. And so I would say from my perspective the  
18 hospital did work to include the parents in those  
19 instances they believed that the parent should be  
20 included. What the family has characterized in the  
21 complaint, the lawsuit, should have transpired and/or  
22 that Dr. Kegl sets up as this is what should have  
23 transpired. This ideal is -- what I'm saying is they  
24 share in the fact that that ideal was not achieved.

25 Q. Okay. I assume you probably don't have the

1 deposition of Linda, Priscilla, or Roger with you  
2 today.

3 A. I do on a -- on the thumb drive. I mean, I  
4 brought the envelope with the thumb drive.

5 Q. Okay. I don't -- unless you need to, I'll  
6 represent to you, and we can confirm this if you  
7 dispute this, but you might remember it, Linda  
8 Durand's deposition at page 62, line 4 through 11,  
9 says that she requested an interpreter when she  
10 arrived at the hospital. She says that she went up  
11 and requested an interpreter. I'll read it to you  
12 verbatim and Mr. Frantzen can object if I read it  
13 inaccurately.

14 MR. FRANTZEN: Can you just give us the page  
15 and line number when you get there?

16 MS. GILBERT: Page 62, line 4 through 11.

17 Q. So the question says -- well, I'll just start  
18 at number 1, "Sounds like you got to the hospital  
19 sometime around 1:00 or 1:30 in the afternoon of  
20 May 8th; is that right?"

21 And Linda Durand says, "About 1:30, yes."

22 And then the question posed, "Okay. Tell me  
23 what happened or what went on when you arrived at the  
24 hospital. Who did you talk to? Who did you see?  
25 Give me a sense of that."

1 Linda Durand says, "I saw my family and I saw  
2 doctors coming in and out and nurses as well coming in  
3 and out. It was a very confusing time. And I saw  
4 some of -- some of his friends there. And I wanted to  
5 know exactly what was going on and so I asked for an  
6 interpreter. And so I went up and requested an  
7 interpreter."

8 So that's the first point at which she  
9 requested an interpreter, a general request for an  
10 interpreter, not for anything specific, just for a  
11 request for an interpreter.

12 And then Priscilla Durand says in her  
13 deposition -- and did I read that correctly,  
14 Mr. Frantzen?

15 MR. FRANTZEN: I have no objection to what  
16 you read off there.

17 Q. Page 118, 19 through 119, 5. The question is  
18 asked at line 19.

19 A. What page? I'm sorry, are we on Priscilla or  
20 Linda?

21 Q. Priscilla.

22 A. So what is the page?

23 Q. 118.

24 A. Okay.

25 Q. Line 19, the question is, "Do you have any

1 recollection of that specific time?"

2 "Yes" is her answer.

3 "Of your parents having difficulty getting  
4 interpreters of your parents ever even being there."

5 And her answer at line 23, "I remember asking  
6 or telling Amy that my parents were coming and she  
7 already knew that they were deaf, but I told her  
8 again, 'my parents are coming, they will need an  
9 interpreter.'"

10 And then at page 19, "And there wasn't one  
11 provided when I asked." And then there's some  
12 clarification of when, she says let me -- Mr. Frantzen  
13 says, "Let me stop you there. Are we talking May now  
14 or are we still talking April?" And she said, "We're  
15 talking May."

16 So in both of those instances there was a  
17 request for interpreters made initially. I mean, you  
18 agree that people don't always know when doctors and  
19 nurses and healthcare providers are going to be coming  
20 in and out; right?

21 A. So which one of those questions are you  
22 wanting -- so what is the -- so you laid this  
23 foundation. Help me to understand. So what's your  
24 question, that they don't know when --

25 Q. You understand that deaf people don't know



1 when doctors and nurses and healthcare providers will  
2 be coming in and out of the room; correct?

3 A. Right. I mean, I think that there's -- you  
4 can -- you may not know it, but you can find out when  
5 rounds are going to be conducted. You know, but,  
6 right, I assume that in this case there was medical  
7 personnel moving in and out.

8 Q. And you understand that it was an intensive  
9 care unit situation; correct?

10 A. Right.

11 Q. Right. Linda Durand, when she initially  
12 arrived, put in the request for an interpreter, I just  
13 read that.

14 MR. FRANTZEN: That's what she testified to  
15 is my objection.

16 BY MS. GILBERT:

17 Q. We're talking about what  
18 Ms. Witter-Merithew's understanding is of the record.  
19 So I just want to make sure we're on the same page  
20 with regard to what the record says so there isn't  
21 confusion moving forward that these requests were  
22 made. At least this is what the plaintiffs say.

23 A. Yes. This is what the plaintiffs say. And  
24 when you talk about the record, I assume you mean in  
25 its entirety. So that information gets balanced with,

1 for example, Amy Klopp's deposition where she  
2 indicates that she knew the parents were deaf and that  
3 she wasn't sure whether she had requested the  
4 interpreter before or because Priscilla had asked her.

5 Q. Okay.

6 A. And so there is some -- there's some -- you  
7 know, when I look at the record, of course, I'm  
8 looking for is this said -- is this comment supported  
9 by more than just this individual's statement, right.  
10 And so there does seem to be some overlap between  
11 Dr. -- I mean Amy Klopp's indication that she  
12 interfaced with -- with Priscilla about her parents  
13 and Priscilla's indication that she interfaced with  
14 Amy about that. There -- I wasn't able to find any  
15 corroboration for Linda's statement. And, yeah, so  
16 that relates a little bit to Dr. Kegl's statement that  
17 the Durands wrote notes to the doctors. And that they  
18 told her -- that she asked them and they said, oh,  
19 yes, they wrote notes to the doctor, but there's no  
20 reference to that in their testimony anywhere. And  
21 so, right, I agree that Linda and Priscilla indicated  
22 that they made the requests and that it seems to be  
23 part of the record.

24 Q. Okay. So at least from Linda and Priscilla  
25 Durand's perspective, they did assert a clear

1 directive to request interpreters?

2 MR. FRANTZEN: Object to form.

3 A. I don't know that a clear directive.  
4 Priscilla said, "My parents are deaf, they'll need an  
5 interpreter." Amy knew that and she agreed. So,  
6 yeah -- and who Linda spoke with, she went up to,  
7 whoever it is that she spoke with is not clearly  
8 identified nor could I find any deposition testimony  
9 from whoever that person is that she interfaced with  
10 when she made that request.

11 Q. So it's your position that it wasn't clear to  
12 Fairview that they were requesting interpreters?

13 MR. FRANTZEN: Just object to the form.

14 A. I'm not sure that I'm following your line of  
15 questioning to be able to answer accurately.

16 Q. I asked you if Priscilla and Linda Durand had  
17 presented a clear directive of requesting  
18 interpreters. Because you say on page 14 that "They  
19 failed to assert a clear directive as to what they  
20 required in order to achieve the required level of  
21 access and understanding." And I'm trying to  
22 understand where you get that if their testimony  
23 states that they did request interpreters. And so --

24 A. Yes.

25 Q. -- is it that they're not telling the truth

1 or that Fairview didn't understand clearly? Where is  
2 the problem, in your expert opinion?

3 A. And so they -- I agree that they state that  
4 they requested the interpreter -- they requested an  
5 interpreter. What is lacking around that is the when,  
6 in what way. You know, there seemed to be an  
7 underlying expectation that interpreters would be  
8 there 24/7, but there's no indication that that was  
9 ever stated. That's what I mean by clear directive.  
10 That they, at least in the suit and the line of  
11 testimony that -- not testimony, but the line of logic  
12 that Dr. Kegl follows in her report is that there  
13 was -- there's an ideal and that there's the  
14 perception that there should have been and people  
15 should have known that there should have been  
16 interpreters there around the clock. But no one  
17 indicates that that was ever stated. The expectation  
18 seemed to be there, but that request was never made.  
19 And so to say I asked for an interpreter without being  
20 specific about what else was involved with that, you  
21 asked for an interpreter when, for what, you know,  
22 what was your expectation. It's lacking. That's what  
23 I mean by clear directive.

24 Q. And you don't think the hospital should have  
25 those answers of when an interpreter is needed?

1           A. I'm sorry, I need you to clarify what you  
2 mean by have those answers, meaning that they should  
3 know themselves without having to be asked; is that  
4 what you're inferring?

5           Q. The hospital knows when communications are  
6 going to be presented. The family members and  
7 patients don't know when a healthcare provider is  
8 going to come into the room. We already established  
9 that a few minutes ago. The hospital is in the  
10 position to know when doctors will be coming in and  
11 out and when rounds will be made; correct? Right?

12           MR. FRANTZEN: Object to the form.

13           A. I would assume that they have a general  
14 knowledge of when the doctor rounds are going to be.  
15 I think that a very general knowledge of when nursing  
16 staff will come in meaning I assume that there's some  
17 schedule within every hour, at some point during that  
18 hour they have to walk into the room. But whether or  
19 not those are times when an interpreter should be  
20 there I think it's very subjective. As well, the  
21 interpreter was not for the patient. And by their  
22 testimony, particularly Mr. Durand's testimony, they  
23 were coming and going. And so what the hospital  
24 didn't know, even though it may know when doctors are  
25 going to be there, what they didn't know is when the

1 family was going to be there or when, specifically,  
2 the parents were going to be there.

3 On several occasions, Mr. Durand talks about  
4 him and Linda coming into the room and people were  
5 already there. They came and went. He said they came  
6 and went, they went back home several times. They  
7 went out and they ate. These are all things that he  
8 says transpired. So I don't think the hospital had a  
9 clear understanding of when the parents were going to  
10 be there. So it would seem that if the -- if they  
11 wanted interpreters there when they're there, they had  
12 an obligation to say here's when we're going to be  
13 here, we would like interpreters at these times.

14 Q. And so the hospital doesn't have any  
15 obligation to check in with the parents to see if  
16 there's a need for an interpreter even though the  
17 parents don't know when the healthcare providers are  
18 going to come?

19 MR. FRANTZEN: Object to form.

20 A. It is my understanding that there were at  
21 least two occasions when the hospital personnel did  
22 check in with the family about the need for  
23 interpreting services and they were told both times  
24 that services were not needed. I don't know if there  
25 were other instances. But there is testimony that

1 there were at least two instances.

2 Q. I'm sorry, I didn't get a clear answer to my  
3 question. Madam Reporter, could you please repeat the  
4 question?

5 (The reporter read the last question.)

6 MR. FRANTZEN: Same objection to form.

7 A. It I would say that the hospital does have a  
8 shared responsibility to make sure that services are  
9 provided and I believe that they attempted to do that.

10 Q. How is that?

11 A. They checked in with the family twice to see  
12 if they wanted interpreting services and interpreting  
13 services were denied. And they secured interpreters  
14 on at least two other occasions during the May 8th and  
15 9th time frame.

16 Q. So you agree that Fairview had a clear  
17 understanding that sign language interpreters were  
18 needed for Roger and Linda Durand; correct?

19 MR. FRANTZEN: Objection, form.

20 A. I don't believe that's what I said at all.

21 Q. I'm asking you if you believe that Fairview  
22 had a clear understanding that Roger and Linda desired  
23 to communicate through sign language interpreters?

24 MR. FRANTZEN: Same objection.

25 A. Based on the information that I've been

1 provided, I do not think they did have a clear  
2 understanding of what Mr. and Mrs. Durand expected.

3 Q. I appreciate that; however, that wasn't my  
4 question. I'm asking you if Fairview had, in your  
5 perspective, a clear understanding that Roger and  
6 Linda desired to communicate with healthcare providers  
7 through sign language interpreters?

8 A. And I'm saying I don't believe that they did.

9 Q. You talk about this empowerment in your  
10 report. Did you believe that Linda and Roger Durand  
11 felt disempowered in this situation?

12 A. Can you please direct me to the place where  
13 I'm talking about disempowerment?

14 Q. Yes. But first I'd like for you to answer  
15 that question while I find it. Do you believe that  
16 Linda and Roger Durand were disempowered during May 7,  
17 8, and 9, 2013?

18 MR. FRANTZEN: Object to the form of the  
19 question.

20 A. I can't speak to specifically those days. I  
21 do have a general impression that there have been any  
22 number of things that have been disempowering to  
23 Mr. and Mrs. Durand.

24 MS. GILBERT: Let's go off the record for  
25 just a minute.



1 (Recess taken from 1:28 p.m. until 1:34 p.m.)

2 BY MS. GILBERT:

3 Q. So page 15 of your report, just to wrap up  
4 your conclusion number 1 before we get into your  
5 conclusion number 2, what more did you expect Roger,  
6 Linda, or Priscilla Durand to do to put Fairview on  
7 notice of their need to communicate with interpreters?

8 A. Well, certainly, I think that they had an  
9 obligation to -- they had at least after the fact, I  
10 don't know what they had going in, but after the fact  
11 they're articulating a level of inclusion that was not  
12 achieved for them. So they had -- I'm assuming they  
13 had some vision of what they wanted to see happen and  
14 they should have communicated that.

15 So as I said earlier, they would have  
16 indicated that anytime they were there they wanted  
17 interpreters, that they -- there was an intent to stay  
18 all night, and that they wanted direct access to  
19 whatever doctors and nurses were saying, whenever they  
20 came into the room. Because that certainly would have  
21 impacted, you know, there would have to have been some  
22 exploration about whether they were entitled to all of  
23 that information. I don't know.

24 I don't know what limits surround the HIPAA  
25 and the healthcare designee and what can be

1 communicated if it's not volunteered by the healthcare  
2 designee or what I think of as proxy. I just don't  
3 know what all the legalities are around all of that.  
4 But, certainly, if they had that expectation, that  
5 should have been communicated so there could have been  
6 some negotiation around that and the hospital would  
7 have known more what to anticipate. And then that  
8 there had been -- they also would be clear about their  
9 comings and goings. So that they -- if they -- if  
10 there was going to be an interruption to the need for  
11 the interpreter, that the hospital would have been  
12 aware of that so that resources were not going to be  
13 wasted.

14 As well, Dr. Kegl talks about alternative  
15 strategies that could have worked with Mr. and  
16 Mrs. Durand, with Roger and Linda, that included  
17 written communication. And so that it would have  
18 seemed that they should offer in the absence of  
19 interpreters here's other ways that you can  
20 communicate with us that will work well. So, yeah,  
21 those are the things that I think they should have  
22 provided to the hospital.

23 Q. And is it your position that Fairview would  
24 have had any obligation in that engagement?

25 A. Any obligation, certainly to communicate to

1     them what -- in terms of what they were looking for,  
2     what was possible and what wasn't possible. And to  
3     let them know the process and procedures that would be  
4     followed to make sure that inclusion could happen to  
5     the degree that it could happen.

6             Q. Looking at page 15, we talked about this a  
7     little bit already earlier in your deposition about  
8     whether or not having interpreters there was helpful.  
9     You don't -- you're not saying that it was worthless  
10    to have interpreters there; right? That's not what  
11    you're saying?

12            A. Not at all.

13            Q. Okay. Explain to me what you mean by the  
14    interpreter didn't mitigate the underlying issues of  
15    lack of understanding. Can you explain that a little  
16    bit more, what you mean by that conclusion?

17            A. Well, first, I should state that it's my --  
18    that this entire discussion centers around Dr. Kegl's  
19    statement in her expert report that the inclusion of  
20    interpreters would have ensured that all the things  
21    that Priscilla was not able to do would have been  
22    done.

23                    And so at the most basic level, I'm  
24    challenging the assumption that interpreters, you  
25    know, are the end all to linguistic access for deaf

1 people because there are many variables. And  
2 interpretation is always fraught with some degree of  
3 error. And so even having interpreters there is not a  
4 surefire solution to the level of inclusion or  
5 understanding that these parents desperately wanted.  
6 May it have improved things? We certainly hope so.

7 But there's evidence that having the  
8 interpreter there -- and I tried to speak to the  
9 places where they said they left without  
10 understanding. And so I keep coming back to this  
11 comfort care because that has been emphasized in  
12 Dr. Kegl's report and in Linda's report and also  
13 Priscilla mentions it, and then in the interview that  
14 Dr. Kegl was doing with Priscilla present and Mr. and  
15 Mrs. Durand there, it comes up numerous times. And by  
16 Mr. Durand initially and then Linda adds to it, but  
17 then Dr. Kegl really promotes -- she offers them her  
18 interpretation of how they should have felt and how  
19 they -- you know, what they were probably experiencing  
20 because of that. So at one point it was almost like  
21 she was the one that had had the experience rather  
22 than gleaning from them what their experience was.

23 And so this -- that piece, that concept  
24 seemed to be a critical concept because it influenced  
25 other decisions that were made subsequently. So their

1 Lack of understanding of that, they attribute to the  
2 reason Roger Durand was not at the hospital on the 9th  
3 and the reason that he didn't stay overnight that  
4 night. Although, he in his testimony also attributes  
5 that to some other things. But it seems to be pretty  
6 pivotal. It seems to be pretty pivotal. And the  
7 interpreter was not conveying that in a way that they  
8 understood.

9 But even if the interpreter did their very  
10 best and provided what would be deemed an equivalent  
11 rendition of that information, a dynamically  
12 equivalent rendition, they still may not have  
13 understood because Priscilla herself, even as part of  
14 the medical field, did not understand the implication,  
15 the implicit piece of that. So that's what I'm  
16 referring to in this section.

17 Q. Would you agree that even having an  
18 interpreter there doesn't necessarily guarantee  
19 communication is going to be effective?

20 A. Yes.

21 Q. Right. But it allows for a level playing  
22 field of exposure to information so that the hearing  
23 people get the same -- and the deaf people get an  
24 equal quantity and quality of communication access?

25 A. I wouldn't be able to agree with that

1 statement because that -- because there's many factors  
2 that impact that. When you say a level playing field,  
3 I don't think we ever get a level playing field. You  
4 know, as much as I want it, I don't think that the  
5 interpreters are that good. The only way that you  
6 really get a level playing field is if everybody is  
7 deaf, right?

8           You know, if everybody is deaf and everybody  
9 uses ASL, then we've got a level playing field. Or if  
10 everyone is hearing and gains information the same  
11 way, then there's a level playing field. What you  
12 have if you include interpreters is an opportunity for  
13 greater equity than you would have if interpreters  
14 aren't there, right.

15           And so -- but does that equity ever -- you  
16 know, so speaking from my own experience as an  
17 interpreter, I certainly pride myself on moments in  
18 time where I feel like I have created a moment where a  
19 deaf person might be on equal footing with a deaf --  
20 with a hearing person, only moments later to have that  
21 fall short because in the moment that I'm  
22 interpreting, I can't -- particularly, if it's  
23 simultaneous interpreting, the interpreter can't  
24 possibly mitigate all of the differences in fund of  
25 knowledge gaps or, you know, whatever. And a moment

1 of interpreting can't compensate for deficits in deaf  
2 education that have prevailed for years.

3 So I would not say having an interpreter  
4 there creates the level playing field, but it creates  
5 more of a chance of getting closer to that than would  
6 exist if they weren't there assuming the interpreter  
7 has the appropriate degree of competence and knows  
8 what it is that they're there to do.

9 Q. All right. Do you have an understanding of  
10 how long the interpreter was present on May 9th?

11 A. On May 9th, I can't say specifically for  
12 May 9th. What I can say is that there doesn't seem to  
13 be a clear indication of how much time the interpreter  
14 was there either on the 8th or the 9th. The  
15 documentation isn't clear about arrival times and  
16 departure times are not clearly indicated, and the  
17 parties that are involved seem to have different  
18 perspectives on how long the interpreter was there.  
19 So -- but I can't speak specifically to the -- that's  
20 just my general recall of both the 8th and the 9th.

21 Q. Linda and Roger and Priscilla testified that  
22 the interpreter was present about 15 minutes on  
23 May 9th. During that 15 minutes there was some  
24 communication one on one with Amy Klopp and Roger and  
25 Linda. And what conclusion you bring, and I think

1 where there's a dispute between your conclusions and  
2 Judy Shepard-Kegl's conclusions are that you're saying  
3 that having the interpreter wouldn't have mitigated it  
4 or didn't mitigate the problem because of the lack of  
5 understanding because of implicit and explicit  
6 communication. And Judy Shepard-Kegl's position is if  
7 the interpreter had a greater wealth of knowledge as  
8 the interpreter had been there for that hour-long care  
9 conference, the interpreter would have had more tools  
10 to be able to communicate effectively with Roger and  
11 Linda Durand. What are your thoughts regarding that  
12 opinion?

13 A. Yes. So I believe we talked about this  
14 earlier today and my opinion remains the same, that  
15 it's unclear to me whether that is what would have  
16 transpired or not because even if the interpreter --  
17 in fact, even more so because the interpreter was only  
18 there for 15 minutes, if that's the fact, if the  
19 interpreter was only there for 15 minutes and this  
20 term "comfort care" came up, because the interpreter  
21 didn't have other context to draw on to unfold that  
22 interpretation, the interpreter -- that phrase would  
23 be a red flag. And so the interpreter should have  
24 asked what it meant.

25 And according to Mr. Durand's testimony, the



1 signs that the interpreter used are what would be  
2 referred to as a gloss meaning they're just -- they  
3 were presented literally, not contextually. And so  
4 there would not have been a way for the parents to  
5 have understood what that term meant according to the  
6 way the interpreter signed it.

7 Q. On page 15, there's a conclusion, you say  
8 it's evident to this expert that the incidence of  
9 misunderstanding and error is significant and  
10 consistently present during interpretive events. And  
11 that's the second sentence of the first paragraph  
12 under number 2 -- or the second half of the first  
13 sentence.

14 A. Yes. I'm saying that according to the  
15 diagnostic assessment that I -- diagnostic assessment  
16 work that I've done, that the incidence of  
17 misunderstanding and error is significant and  
18 consistently present during interpretive events,  
19 that's correct.

20 Q. So that's a general statement, you're not  
21 saying that specific that there's a significant  
22 consistent misunderstanding of Roger and Linda per se  
23 as unique individuals, you're saying that generally;  
24 right?

25 A. Generally. Generally. In other words, that

1 interpreting is like human communication, that error,  
2 misstep, misunderstanding is -- it's inherent to the  
3 process. It's not a perfect science. It relies on  
4 humans and humans misunderstand and make mistakes.

5 Q. Okay. Let's go to page 16. In the middle of  
6 the second paragraph of the first full paragraph,  
7 second sentence says, "Clearly, the impact of the  
8 grief has left the family vulnerable." what do you  
9 mean by that? Is that an observation or a conclusion?  
10 I don't really know where this fits in. Can you  
11 explain to me what you mean by that sentence?

12 A. Yes. This relates earlier to the comment  
13 that I made about feeling that in multiple ways or  
14 perceiving that in multiple ways the Durands had been  
15 disempowered. So, in particular, I'm reflecting on  
16 Mr. Durand's testimony in his deposition and his  
17 frequent reference to the fact that they didn't really  
18 have a place in this process, that they didn't really  
19 have a role there, that they just wanted to be there  
20 for the kids and support where they could, that  
21 because of the strained relationship that they had  
22 with Shaun they didn't want to push things.

23 And so based on that testimony and then later  
24 in a review of the video where he is -- him and Linda  
25 and Priscilla are interacting around this interview

1 with Dr. Kegl, he talks about some of that same stuff  
2 again. And how he didn't really know what was going  
3 on and that they just got bits and pieces everywhere  
4 and that his physical appearance as he talks about  
5 this is that he's just crestfallen. You know, that  
6 he's just -- he's devastated by this. And I think  
7 that my observation is that based on his deposition  
8 testimony and his statements to Dr. Kegl that some of  
9 that is motivated out of his grief for the strained  
10 relationship that existed with Shaun.

11 And so I think that that in particular makes  
12 Mr. Durand vulnerable to suggestion and influence  
13 about who ultimately is responsible for all that  
14 transpired and led up to Shaun's death.

15 Q. How does that interact with disempowerment?

16 A. An example -- first of all, I don't recall  
17 having talked about disempowerment. So I'm happy to  
18 look at the place where you say I indicated that. But  
19 I'm happy to address the concept of disempowerment and  
20 the way that I think it showed up in this particular  
21 situation.

22 I think -- it is my professional opinion that  
23 the failure to encourage the Durands to take  
24 accountability for self-advocacy is extremely  
25 long-term debilitating to them and disempowering to

1 them. That by them being encouraged to be explicit in  
2 stating what their needs are and their expectations  
3 are is very empowering to them. So they've been  
4 disempowered by being led to believe that somehow  
5 they're victims in all of this and they don't -- that  
6 they did not have any responsibility for the outcomes.

7 I think that they are also -- in the  
8 interaction where Dr. Kegl essentially takes over  
9 their commenting about what they were experiencing and  
10 she begins interpreting to them, telling them what  
11 they felt and what they were experiencing, I think  
12 that was also very disempowering to them and reflected  
13 a lack of objectivity from the interviewer in that  
14 case and it really crossed over in that moment from  
15 her being an objective researcher or data collector to  
16 really being an advocate for them and actually just  
17 sort of taking over for their feelings rather than  
18 allowing them to express what their feelings were. So  
19 those are a couple of examples that come to mind.

20 Q. The concept of disempowerment is coming  
21 across without who is imposing the disempowerment.  
22 Were you saying that the family members were  
23 disempowering the Durands or Fairview was  
24 disempowering the Durands or just society  
25 disempowering deaf people? I'm losing the subject of

1 the disempowerment coming from who or where?

2 A. Yes. I think it was happening all over the  
3 place. You know, it's -- when the interpreter failed  
4 to do something more substantive with the comfort care  
5 phrase, to me, that is an example of disempowerment.  
6 By interpreters being the most competent they can be  
7 and being sufficiently fluent in the language as it's  
8 used by deaf people, they empower deaf people because  
9 deaf people have a clear understanding of the  
10 information and what is meant by the information  
11 that's being communicated with them and they're able  
12 to react and engage accordingly.

13 The tension within the family and their way  
14 of communicating, I believe it was Judy Kahn, one of  
15 the nursing staff who was -- the nursing staff person  
16 who helped reposition and was present with Shaun at  
17 the time of his death, in her deposition testimony she  
18 talks about this argument that was happening between  
19 Priscilla and Linda at a time that she came back into  
20 the room right after Shaun had passed away. And,  
21 certainly, the stress of all of that was  
22 disempowering. So the tension within the family,  
23 certainly was disempowering. Yeah.

24 Q. Turning to page 15 at the bottom of your  
25 report, first sentence, last paragraph, you say,

1 "Further, to imply that the inclusion of interpreters  
2 on demand would have prevented the emotional  
3 devastation experienced by Linda and Roger Durand is  
4 not grounded in the evidence available in this case."  
5 Did I read that correctly? Did you find where I am?

6 A. Yes. So you're talking about the first  
7 sentence, I'm sorry, I thought you said the last  
8 paragraph. So the last paragraph, the first sentence.  
9 Yes, I see that. And what is the question?

10 Q. So are you saying that the Durands didn't  
11 experience communication access problems by this  
12 statement?

13 A. I would say that their vision for the level  
14 of access that they wanted, at least they wanted it in  
15 hindsight. I don't know -- it's not clear to me what  
16 they wanted or expected when they went into it because  
17 particularly based on Roger Durand's testimony but in  
18 hindsight, the vision that they wanted, the level of  
19 inclusion they wanted didn't occur. Whether -- and  
20 they are indicating in the complaint that the  
21 inclusion of interpreters would have resulted in a  
22 different outcome. But I'm not -- in terms of the  
23 emotional devastation that they experienced, I don't  
24 think there's evidence that that would have been the  
25 case.

1 Q. And what emotional devastation are you  
2 referring to in this statement?

3 A. I'm talking about their testimony that they  
4 didn't understand, that they didn't know that his  
5 death was impending, that it was devastating to  
6 Mr. Durand that he was not there at the time of his  
7 death, that that's what I'm referring to.

8 Q. Okay. So their claims of miscommunication,  
9 you're saying that to imply that having interpreters  
10 there would have prevented them communication is not  
11 grounded in the evidence?

12 A. That -- I don't believe that anything that  
13 you just said is what I said or what I wrote there.  
14 They have indicated that they believe and Dr. Kegl has  
15 indicated that there should have been interpreters on  
16 demand, that when they asked, the interpreters should  
17 have been there. That the interpreter should have  
18 been there nonstop the entire time they were there.  
19 And what I'm saying is had that happened in the best  
20 case scenario, this family would still have  
21 experienced emotional devastation.

22 And the testimony that I rely on to support  
23 that is, in particular, Roger Durand's testimony about  
24 what he experienced while he was in the room, what he  
25 expected would be happening while he was in the room.

1 And it's a very different vision for what he wanted  
2 that is talked about after the fact in retrospect what  
3 they wanted to see happen. He also talked about  
4 feeling conflicted and tenuous about their  
5 relationship with Shaun, and that's why he held back.  
6 And so given all of those realities, the interpreter  
7 would not have mitigated that.

8 Q. Going to page 16, "There is no evidence  
9 supporting the notion that after many years of dealing  
10 with Shaun's ongoing health crisis, repeated  
11 discussions between the family, independent of  
12 healthcare professionals and sometimes with healthcare  
13 professionals, that the inclusion of interpreters  
14 would have in any way improved the level of  
15 understanding that apparently continues to elude Roger  
16 and Linda Durand." That's the last sentence of the  
17 first paragraph.

18 A. Yes, I see that.

19 Q. How is it possible to know if interpreters  
20 being present would or would not help. I mean, how as  
21 an expert or anyone able to draw that conclusion?

22 A. In Priscilla's testimony, there -- one of the  
23 inconsistencies that comes up is on one hand you have  
24 testimony from Priscilla that her parents and all of  
25 the family knew that Shaun's condition was terminal,



1 that he didn't have much longer to live, et cetera.  
2 And in Mr. Durand's testimony, he -- particularly in  
3 the interaction with Dr. Kegl where he and Linda and  
4 Priscilla were present and it was supposed to be the  
5 event, the interactive event that Priscilla was going  
6 to interpret, in that particular 20, 25 minute  
7 interaction, Mr. Durand talks about knowing that he  
8 didn't have long to live. Yet much of this case is  
9 based on the premise that they didn't know that.

10 So there's -- so that's what I'm relying on  
11 here when I say that there's -- there is no -- it's  
12 not grounded in the evidence that the interpreters  
13 being there would have changed this phenomena that  
14 they testified they did know, yet they're saying they  
15 didn't know. And so I don't think that having the  
16 interpreter there would necessarily have changed that.

17 And my assumption is, and it could be an  
18 erroneous assumption, but it seems like a logical  
19 assumption is that by the time the parents went into  
20 their depositions, Shaun's -- they had talked about  
21 Shaun's passing with their legal counsel, with their  
22 family members, with other members in the deaf  
23 community, et cetera. And, yet, in their testimony,  
24 they continued to say that they still didn't clearly  
25 understand what really had happened to Shaun, why he

1 really died, what really all the details were. They  
2 still seemed to be lacking. There still seemed to be  
3 holes in that, their understanding.

4 So even with direct communication with family  
5 members, legal counsel, et cetera, it didn't --  
6 they're not indicating that it improved their  
7 understanding of this case, what happened to their  
8 son, et cetera.

9 Q. Page 16, you make a statement about, in the  
10 middle of the page, "The ultimate source of the issue  
11 is not the lack of interpreters, but something that  
12 existed long before their engagement with Fairview  
13 Ridges Hospital and its healthcare providers, and  
14 according to their testimony, continues to persist  
15 today." You leave me hanging though, I'm not sure  
16 what the ultimate source of the issue is?

17 A. Yes. So I want to acknowledge that at the  
18 time that I wrote this report, the hospital's attorney  
19 can verify that I was recovering from being extremely  
20 ill, very close to be hospitalized. And so as I read  
21 back through the report, I appreciate that you were  
22 left hanging. I think there's probably more than one  
23 place where that happens.

24 And so, right, the source of the issue from  
25 my perspective is this longstanding family dynamic and

1 it -- this family brought this very difficult and  
2 estranged and complex family dynamic into this  
3 situation and they, I'm sure, have exited this  
4 experience with that same complex family dynamic  
5 intact. That's what I'm referring to.

6 Q. All right. I am going to spend this last  
7 45 minutes talking about Judy Shepard-Kegl's report.  
8 Do you need to take a break before we get into that?

9 A. No. I'm fine to continue.

10 Q. Oh, I'm sorry. Actually --

11 MR. FRANTZEN: Anna, what time do you need  
12 to leave?

13 THE WITNESS: I have to leave by 3:00. And  
14 according to my time, it's 2:11 now Eastern Daylight  
15 Time.

16 MR. FRANTZEN: Okay.

17 BY MS. GILBERT:

18 Q. Before we get into that, can you go to page  
19 19 of your report. You reference a 2012 survey, 92 of  
20 which were respondents from Minnesota that were  
21 interpreters. Do you have any knowledge or  
22 understanding of how many certified interpreters there  
23 are in Minnesota?

24 A. At the time that I wrote this report, I  
25 believe I said there were 500 and -- 540 -- I have it

1 somewhere. It's back in here somewhere. Hold on.  
2 Let me find it.

3 Q. Yeah, I see that. 536.

4 A. Yes, 536. And I went back to the RID  
5 database which is a public -- you know, anyone can go  
6 in. And there's a search feature where you can find a  
7 member or find an interpreter and you can put data in  
8 that will bring up the total number of interpreters.  
9 And so I did another analysis and there's seven or  
10 eight more than I reported at the time that I wrote  
11 this. So the number of certified interpreters in  
12 Minnesota is somewhere around 542, 543.

13 Q. And this survey in 2012, when you say 92 of  
14 the national respondents are from Minnesota, are those  
15 certified interpreters or both precertified and  
16 certified?

17 A. That's an excellent question. I don't -- I'd  
18 have to go back and look at that report. I believe  
19 that it would include both. But I don't know that for  
20 a fact. I don't know that for a fact. I'd have to go  
21 back and look at the demographic section of that  
22 report.

23 Q. And we don't have a number of precertified  
24 interpreters in Minnesota?

25 A. Right. I would not have access to that

1 information.

2 Q. So that number 92 isn't necessarily 92 out of  
3 545 or 542 interpreters, it could very well be 92 out  
4 of a much larger number because it would include  
5 precertified interpreters as well; correct?

6 A. It could. Although, the NCIEC would have  
7 sent the survey to their database and their database  
8 is populated by the RID database. And so I would  
9 suspect that the majority of these respondents were  
10 certified.

11 Q. Okay. So we don't have a total number at  
12 this point; correct?

13 A. A total number?

14 Q. Of the precertified and certified  
15 interpreters in Minnesota on which you can then assume  
16 a percentage of this 92?

17 A. Right. No, I don't have it right now, but I  
18 could certainly have that by tomorrow when we resume.

19 Q. The national survey doesn't specify the  
20 number of interpreters in Minnesota that are available  
21 for medical interpreting; correct?

22 That same paragraph on page 19, you talk  
23 about the three settings in which the majority of  
24 staff positions were held and you say K-12,  
25 post-secondary, or VRS, but then you give the national

1 percents that were held in medical situations. Do we  
2 have a percent of how many staff interpreters of those  
3 92 people are staff positions in Minnesota?

4 A. I did not include that information here, but  
5 the report may include that. I would have to go back  
6 and look at the report again.

7 Q. Okay. Do you know where Minnesota ranks  
8 compared to other states as far as number -- or I  
9 guess Twin Cities in particular as far as number of  
10 interpreters compared to other 49 states?

11 A. I actually did look at that in another case,  
12 in the Mayo case, I actually looked at that. And per  
13 capita, it was similar -- similarly situated as other  
14 state -- to other states. It was -- particularly, if  
15 you looked at areas where an interpreter education  
16 program was housed and/or there were large populations  
17 of deaf people. So, for example, looking at  
18 Rochester, New York and the Twin Cities or looking  
19 at -- not Berkley, California, go more north was the  
20 other city I looked at. A city in California where  
21 the Northern California School for the Deaf is  
22 located.

23 Q. So when you say similarly situated as other  
24 states, that's a pretty general statement?

25 A. Other cities. I'm sorry, I meant other

1 cities. You asked specifically -- you mentioned  
2 specifically the St. Paul area. So I looked at their  
3 demographics. I looked at the number of the  
4 population there and then I compared it with other  
5 cities who also had programs for deaf people,  
6 interpreter training programs, and I specifically  
7 remember comparing it to Rochester, New York and a  
8 city in northern California. And, unfortunately, the  
9 name of that city is escaping me right now. And  
10 that's what I mean by the numbers of interpreters in  
11 that area were similar.

12 Q. So you weren't able to collect the data on  
13 how many interpreters were available in May of 2013;  
14 correct?

15 A. That's correct. There wasn't a survey done  
16 in 2013.

17 Q. Or any other research that you've done that  
18 would allow you to be able to surmise how many  
19 interpreters were available in May of 2013 for  
20 Fairview Ridges to call on; right? You don't have  
21 that data?

22 A. No, I don't.

23 Q. Looking at page 20, the last sentence before  
24 you get into your summary, you say that "To attempt to  
25 hold Fairview Ridges Hospital accountable for reality

1 that the field of interpreting and interpreter  
2 education has been unable to resolve is misplaced and  
3 excessively punitive." Are you there?

4 A. Yes.

5 MR. FRANTZEN: Anna, you might want to move  
6 that paper off of the microphone there on the table.

7 THE WITNESS: Oh, yes.

8 MR. FRANTZEN: Thank you.

9 BY MS. GILBERT:

10 Q. Did you understand that Judy was holding  
11 Fairview Ridges Hospital accountable for a reality  
12 that the field of interpreting and interpreter  
13 education is dealing with?

14 A. It is my opinion that the ideal that she  
15 communicated in terms of what should have happened in  
16 this case exceeds the capacity of this hospital or any  
17 other hospital to achieve with any consistency.

18 Q. And you base that on the national survey  
19 results?

20 A. I base that on my 45 years of experience as a  
21 practitioner, my direct experience as a coordinator of  
22 interpreting services for large institutions or for  
23 state government, my knowledge of the literature, and  
24 the discourse that exists in our field on a day-to-day  
25 basis as you're talking to other practitioners, as



1 you're talking to educators, as you talk to deaf  
2 people. The lack of qualified interpreters, the lack  
3 of deaf people having their preferences respected when  
4 they request interpreters, the lack of interpreters to  
5 work in specialized settings is known and is part of  
6 our community culture. And it's been addressed most  
7 recently in -- through the Department of Education  
8 that has just issued invitations to apply for grants  
9 addressing the need to expand interpreters in  
10 specialty areas.

11 So this goes beyond just my personal opinion.  
12 It's been of sufficient -- you know, the community has  
13 been sufficiently aware of it, that the Department of  
14 Ed has responded to it with making hundreds of  
15 thousands of dollars available for training of  
16 interpreters in specialty areas.

17 Q. Do you have an understanding that  
18 availability of interpreters is an issue in this case?

19 A. Yes. I would say availability of  
20 interpreters is evident in the delays that were  
21 experienced in interpreters getting there. And it's  
22 evident in the contracts that exist between the  
23 hospital and interpreting services vendors that allows  
24 for delays in interpreters getting there. A one-hour  
25 delay, a two-hour delay is -- in healthcare,

1 particularly emergency healthcare situations, is  
2 significant.

3 Q. So you have an understanding that Fairview  
4 has presented to you a difficulty of some kind in  
5 securing interpreters for May 8th through 9th, 2013,  
6 for Roger and Linda Durand?

7 A. The hospital has not presented that to me.  
8 That's my observation in reading the documentation and  
9 the deposition testimony and the contractual  
10 arrangements that they have with providers. For  
11 example, that they received a confirmation around  
12 10:45 one day that an interpreter would be present,  
13 but that interpreter wasn't going to be available  
14 until 12 noon. That's a delay from the time that the  
15 request is made until an interpreter can get there.  
16 So that's what I'm relying on.

17 Q. Okay. Madam Court Reporter, could you please  
18 mark for identification Exhibit 8. On the front page  
19 it says "Exhibit 1."

20 (Exhibit 8 marked for identification.)

21 Ms. Witter-Merithew, I'm not going to ask you  
22 any questions about this document other than to verify  
23 that this is a report that you provided when you were  
24 an expert for Trixy Betsworth in the Arrowhead  
25 Regional Medical Center lawsuit. If you could glance

1 through it, this was an exhibit this was filed with  
2 the court April 6, 2015. It's been presented as your  
3 expert report, but I'd like to verify that this is, in  
4 fact, the report that you submitted on behalf of the  
5 plaintiff in this case.

6 A. A general glance through it, it definitely  
7 looks like my report.

8 Q. As well as the attachments in the back, the  
9 appendix, pages 46 -- I'm sorry -- pages 47 through  
10 57, is that also a part of your report?

11 A. Yes.

12 Q. Do you have any reason to believe that what  
13 was filed on April 6, 2015, and representative of your  
14 report is in any way tainted or changed?

15 MR. FRANTZEN: You may want to just look  
16 through the report before you answer that question.

17 A. Yes. That's what I'm doing now. Thank you.

18 (Witness reviewed document.)

19 Appendix A looks intact. It looks like the  
20 report I submitted.

21 Q. Thank you.

22 A. And to the best of my knowledge, it looks  
23 like, you know, as I submitted it.

24 Q. Madam Court Reporter, could you please  
25 present Ms. Witter-Merithew the rebuttal report of

1 Priscilla Saunders and Jason Brandon v. Mayo Clinic.  
2 Mark that as Exhibit 9.

3 (Exhibit 9 marked for identification.)

4 Ms. Witter-Merithew, I'll represent to you  
5 that this is the report that was submitted to me by  
6 the Mayo Clinic. However, I would like for you to  
7 just glance through it to confirm that this is the  
8 report that you submitted to them.

9 (Witness reviewed document.)

10 A. Okay. I've looked at it and I believe that  
11 it's the report that I submitted. I wasn't able to  
12 read it in its entirety, but my overall observation is  
13 that, yes, that's the report I submitted.

14 Q. Okay. Madam Reporter, would you please mark  
15 for identification the Linguistic Consulting Service  
16 report of Judy Shepard-Kegl and present it to  
17 Ms. Witter-Merithew.

18 (Exhibit 10 marked for identification.)

19 Ms. Witter-Merithew, we're not going to go  
20 through this whole report. I just have a few  
21 questions about some of Dr. Shepard-Kegl's conclusions  
22 that I wanted to run by you. First, I just want to  
23 ask you what your opinion is of Dr. Shepard-Kegl as an  
24 expert generally?

25 A. I've known Dr. Kegl for many years and I have

1 respect for her knowledge and expertise.

2 Q. What is your opinion of Dr. Shepard-Kegl as  
3 an interpreter instructor?

4 A. I couldn't speak to that because I've never  
5 actually seen her instruct. I've never seen her make  
6 a presentation on instruction. So I really don't know  
7 much about her philosophy of teaching and learning.  
8 So I really couldn't speak to that specifically.

9 Q. What is your opinion about Dr. Shepard-Kegl's  
10 assessments for deaf individuals with regard to their  
11 ASL and English linguistics?

12 MR. FRANTZEN: In general or in this case?

13 MS. GILBERT: In general.

14 A. I believe that she certainly has the  
15 background and qualification to conduct a thorough  
16 assessment. And in the limited exposure I've had to  
17 actual assessments that she's done, I have found them  
18 to be thorough, almost to the point of oversell.

19 Q. What do you mean by oversell?

20 A. The -- in the cases where I'm familiar with  
21 her assessments, the amount of her report that is  
22 expended on indicating that the individuals are, in  
23 fact, deaf and, therefore, entitled to interpreting  
24 services seems excessive given that whether or not the  
25 individuals were deaf has not ever been at issue.

1 Q. Do you have any questions or concerns about  
2 Dr. Shepard-Kegl's education, training, or experience  
3 as a linguist?

4 A. No, I do not.

5 Q. Do you have any questions or concerns about  
6 her education, training, and experience as an  
7 interpreter instructor?

8 A. As I said before, I really don't -- I don't  
9 know her work in that area and she has not --  
10 although, she attends the conferences for interpreter  
11 educators, she has not really been a presenter nor has  
12 she published information about the teaching of  
13 interpreting, so I just don't have a sense of her in  
14 that way. I do know that she's with the program, you  
15 know, at the University of Southern Maine. And I  
16 believe that that program has been accredited, so it  
17 certainly has met national standards, but I don't -- I  
18 don't really know of her work directly as an  
19 interpreter educator.

20 Q. So I take it that if you don't know, you  
21 don't have any concerns or red flags?

22 A. I'm saying that I couldn't -- I don't know.  
23 So I couldn't say if I have concerns or red flags.

24 Q. Nothing's been brought to your attention to  
25 date that have any concerns about her position as an

1 interpreter educator?

2 A. I'm not sure how to respond to that. You  
3 know, we're a small community and so, you know, people  
4 talk. And, you know, so I certainly have heard  
5 comments, but I wouldn't -- I have no direct  
6 knowledge, so I couldn't -- I couldn't say.

7 Q. You have heard rumors that are concerns about  
8 her skills as an interpreter educator?

9 A. You know, really I just feel like it's  
10 gossip. So I want to retract that. I don't even want  
11 to comment on it.

12 Q. Okay. I understand. In Dr. Shepard-Kegl's  
13 report, she distinguishes between the CALP or the  
14 cognitive academic language proficiency between Roger  
15 and Linda Durand. And she notes that Linda required  
16 more time to process information than Roger Durand.  
17 Do you have any reason to dispute that?

18 MR. FRANTZEN: Which page of that report,  
19 Counsel?

20 Q. You can answer the question.

21 A. Could I look at the context in which she said  
22 that? Could you direct me to that?

23 Q. We will get there. Sure. I'm asking a  
24 pretty broad question first. I don't want to get too  
25 far into the we's yet. So just generally she makes a

1 notation that Linda Durand requires more time to  
2 process information than Roger Durand. And I'm  
3 wondering if you have any reason to dispute that or if  
4 you disagree with that?

5 A. I wouldn't be prepared to comment unless I  
6 could look at the context in which she made that  
7 statement.

8 Q. Okay. She also makes the statement that  
9 Roger and Linda Durand are bright, well-educated  
10 adults. Do you agree with that or disagree with that?

11 A. I would agree with that given their social  
12 history and what I observed on the videotapes.

13 Q. She concludes that to fully participate in  
14 the least stressful and emotionally draining way, they  
15 required ASL interpreters. Do you agree or disagree  
16 with that?

17 A. I would -- I would question the use of the  
18 term ASL. If she is using ASL to refer to a broad  
19 range of flexibility and language use, great. But I  
20 would say that both of the parents tend to use more  
21 English-like signing than they do actual ASL,  
22 grammar -- ASL grammar and sometimes speaking  
23 specifically syntax. They certainly use ASL  
24 vocabulary, but their syntax and use of spatial  
25 structuring, et cetera, is more consistent with



1 English-like signing following English word order than  
2 it is ASL.

3 Q. Would a better word be sign language  
4 interpreters as opposed to using the word ASL  
5 interpreters?

6 A. I don't know that it would be better. You  
7 know, other than just depending on your orientation to  
8 the deaf community, the term ASL has very flexible  
9 meaning, but for native users of American Sign  
10 Language, it means something very specific.

11 Q. Okay. Let's turn to page 103 and she phrases  
12 it in another way that you may agree with or not. I  
13 think sometimes the distinction is saying ASL to  
14 clarify what language as opposed to Spanish.

15 A. Right.

16 Q. So there has to be a term --

17 A. Yes.

18 Q. -- that modifies what kind of interpreter is  
19 needed.

20 A. Yes.

21 Q. So on page 103 of Judy Shepard-Kegl's report,  
22 about the first sentence of the second paragraph says,  
23 "To fully participate." "To fully participate in the  
24 least stressful and emotional draining way, they  
25 needed an interpreter who could both understand them

1 and share their thoughts and feelings with the medical  
2 staff working with their son." Do you agree with that  
3 sentence?

4 A. I would say generally, yes. I'm not sure if  
5 I agree with it specifically given that elsewhere in  
6 her report she talks about how written language and  
7 she mentions two other strategies that would have been  
8 successful with this couple in communicating.

9 Q. So you disagree with her conclusion there?

10 A. I said generally, but I wasn't sure if I  
11 would agree with it specifically.

12 Q. She's not saying only, she's saying the least  
13 stressful and emotional -- in the least stressful and  
14 least emotionally draining way.

15 A. Yes. They needed an interpreter who could --  
16 so they were provided an interpreter. Is she saying  
17 that the interpreter -- the interpreters that they  
18 were provided could not both understand them and share  
19 their thoughts and feelings with the medical staff  
20 working with their son? Because they were provided  
21 interpreters. So that's why I'm saying generally I  
22 accept it. I'm not sure specifically because I'm not  
23 sure the entire foundation for it.

24 Q. Okay. Maybe the second sentence helps.  
25 "They needed a qualified interpreter, language

1 competent and impartial, who could reliably interpret  
2 from doctors and other medical providers in order to  
3 be kept apprised of their son's condition to know what  
4 to expect." Do you agree with that statement?

5 A. Well, I agree that if they had an  
6 interpreter, the interpreter should be able to do  
7 that, and they did have access to interpreters on at  
8 least two occasions. I'm not sure if she's saying  
9 that those interpreters did not achieve what she's  
10 described here.

11 Q. I'm just asking if you agree with her  
12 statement there, not what the facts say, just do you  
13 agree with what she's saying here?

14 A. That they needed qualified interpreters who  
15 are language competent and impartial who could  
16 reliably interpret for doctors and other medical  
17 providers, yes, I could agree that to say -- what I'm  
18 disputing is they need it. Because by saying they  
19 need it, it seems to be implying or inferring that  
20 they did not receive that. So that's what -- that's  
21 why I'm not just blanketly accepting that statement.  
22 And they needed their questions answered, but -- is  
23 what she says next, but what questions specifically  
24 because when they had interpreters there, they did not  
25 ask questions.

1 Q. The next sentence, the availability of an  
2 interpreter would have allowed for all of this  
3 communication to occur with ease.

4 MR. FRANTZEN: Where is that?

5 THE WITNESS: Yes, where is that?

6 Q. I'm looking at page 104, the first full  
7 paragraph, second sentence, third sentence, "The  
8 availability of an interpreter would have allowed  
9 for" --

10 A. I'm so sorry. Can you direct me again? I'm  
11 on page 104. Where should I be looking?

12 Q. First full paragraph.

13 A. Yes, ma'am.

14 Q. Third sentence. Do you agree with that  
15 statement?

16 MR. FRANTZEN: The first full paragraph on  
17 page 104, fourth sentence, that's not what you just  
18 said.

19 MS. GILBERT: Third sentence. The  
20 availability, that's the third sentence.

21 MR. FRANTZEN: Thank you.

22 (Witness reviewed document.)

23 BY MS. GILBERT:

24 Q. Do you agree with that statement,  
25 Ms. Witter-Merithew?

1           A. The availability is what I'm not seeing. I'm  
2 in the first paragraph, the third sentence.

3           Q. It's the first full paragraph. So it would  
4 be the second paragraph, but the first full paragraph  
5 on page 104.

6           A. Oh, I'm sorry. Okay. So "the availability  
7 of the interpreter would have allowed for all this  
8 communication to occur with ease facilitated by a  
9 professional who knows how to check for  
10 comprehension," yes. I would say hypothetically and  
11 ideally that statement is correct, but it didn't hold  
12 true when interpreters were present and I'm referring  
13 again to the comfort of care scenario.

14           Q. Okay. Turn to page 105. Again, first full  
15 sentence -- or first full paragraph, "In my expert  
16 opinion," right there. "In the expert opinion of my  
17 colleagues, Annemarie Baker and Betty Colonomos,  
18 Priscilla Durand was incompetent to interpret for her  
19 parents and this incompetence had negative  
20 consequences for her parents." Do you agree with that  
21 statement?

22           A. I agree with the first part of the statement  
23 that Priscilla Durand was incompetent to interpret for  
24 her parents. But the second part infers that she, in  
25 fact, did interpret. And it's my opinion that she did

1 not.

2 Q. So moving onto that next sentence, "Being  
3 left with no recourse but to try her best to interpret  
4 because the hospital failed to provide accommodations  
5 had negative consequences for Priscilla Durand." Do  
6 you dispute that sentence?

7 A. What I dispute is to try her best to  
8 interpret. It continues to be my professional opinion  
9 that at no time was she doing the actual task of  
10 interpreting, but rather she was signing and  
11 communicating with her parents, that that may have had  
12 negative consequences for Priscilla. I don't -- I  
13 couldn't speak one way or the other.

14 Q. So you don't think Priscilla was trying to  
15 interpret?

16 A. I think that the label interpret is being  
17 misused in this case.

18 Q. Do you believe Priscilla --

19 A. Do I believe she tried to communicate with  
20 her parents? Yes, I do because she indicated that she  
21 did. But she also indicated she had not been asked to  
22 interpret and she consistently indicated that when she  
23 was communicating to her parents, it was after the  
24 fact. And so I think that trying to label what she  
25 was doing as interpreting is a misnomer in this case.

1 Q. Do you have doubts that she felt responsible  
2 or guilt for the misunderstanding and suffering of her  
3 parents, the last sentence there?

4 MR. FRANTZEN: Object to form.

5 A. I would not dispute that she felt responsible  
6 and guilty. I would only dispute why she would have  
7 felt that way.

8 Q. And why is that?

9 A. That it was because she was trying her best  
10 to interpret. I don't -- what she describes she did  
11 is not interpretation.

12 Q. Okay. Go to page 104, about the fourth  
13 sentence down from the -- at the very last paragraph  
14 of page 104.

15 A. Fourth sentence? "The hospital's refusal"?

16 Q. One sentence up, "as a CODA."

17 A. Oh, yes, as a CODA. Uh-huh.

18 Q. "It's natural to assume that she'll  
19 experience a certain degree of vicarious trauma when  
20 placed in situations where she sees her parents cut  
21 off from communication and peripheralized." Do you  
22 agree with that?

23 MR. FRANTZEN: Object to the form of the  
24 question.

25 A. I would. The statement, "It's natural to

1     assume," I would challenge on the basis of what it's  
2     natural to assume that.

3             Q. Anything else you disagree with in that  
4     sentence?

5             A. No. I would agree that CODAs often  
6     experience -- I don't know that I would call it  
7     vicarious trauma, but I would agree that CODAs  
8     experience turmoil and conflict seeing their parents  
9     struggle to communicate and to be included within  
10    society. I would certainly agree to that.

11            Q. Two sentences later she says, "She was well  
12    aware that without an interpreter, her parents were  
13    being denied communication access and that every time  
14    she talked she was taking part in that act by  
15    excluding her parents from participation." Do you  
16    have any reason to dispute that?

17            A. Well, I would ask -- I would challenge to  
18    what degree. There's nothing in Priscilla's testimony  
19    or recorded interactions with Dr. Kegl that supports  
20    this. So this seems to be a huge mental health claim  
21    that seems to be speaking to Priscilla's overall  
22    mental health and well-being. And I'm not sure what  
23    qualifications Dr. Kegl brings to that. She, herself,  
24    is not a CODA, nor to my knowledge is she a  
25    psychologist. And there's nothing in Priscilla's



1 testimony that supports these -- this interpretation  
2 here, her opinion here.

3 Q. So you question Dr. Shepard-Kegl's  
4 credibility in drawing that conclusion?

5 A. I think that she's making a quantum leap in  
6 making that conclusion based on what Priscilla  
7 communicated.

8 Q. And so do you disagree with the statement or  
9 agree with it but thinks she doesn't have the  
10 credibility to say it, or what is it exactly that  
11 you're saying about this statement?

12 A. Well, first of all, in my opinion, the  
13 evidence doesn't support that the hospital refused to  
14 provide interpreters. And so, you know, that  
15 statement putting her in a double bind, I don't think  
16 that there's evidence to support that.

17 And to say that Priscilla was well aware that  
18 without an interpreter her parents were being denied  
19 communication access is an overstatement of what  
20 Priscilla communicated. And that to go on to -- as I  
21 read this, it's very reminiscent of the part in the  
22 interaction with the Durands where Dr. Kegl  
23 essentially started taking over their feelings and  
24 projecting what their feelings should and were or  
25 should have been or were, and that's what this is

1     reminiscent of as I read this. So I think that this  
2     is expressing a much more in-depth and extended  
3     representation of what Priscilla communicated was her  
4     experience.

5             Q. So if it wasn't -- if it's an overstatement,  
6     then what would the appropriate statement be with  
7     regard to Priscilla Durand's concerns about her  
8     parents being denied communication access? If that's  
9     an overstatement, what is your explanation of what an  
10    appropriate statement would be?

11            A. Based on what she said in her testimony and  
12    in her own reflections about being put in situations  
13    where communication was an issue, she talked about  
14    feeling uncomfortable, she talked about feeling  
15    conflicted, and she mostly focused on herself rather  
16    than her parents, that she felt embarrassed and  
17    frustrated that she didn't know more of the signs.  
18    And so she seemed much less impacted in her own  
19    statements than what Dr. Kegl. This definitely feels  
20    sensationalized.

21            Q. Dr. Kegl says in her final summary, let me  
22    direct you to it --

23            A. And it's now 3:02. I really have to leave.

24            Q. Okay.

25            MR. FRANTZEN: How much time do you have

1 left, Counsel?

2 MS. GILBERT: I just have two more  
3 questions.

4 MR. FRANTZEN: Do you want to answer these  
5 two questions and be done?

6 THE WITNESS: I'll try my best.

7 MR. FRANTZEN: All right.

8 BY MS. GILBERT:

9 Q. Page 105, the last paragraph, second  
10 sentence, "The refusal to provide an interpreter  
11 harmed not only Linda and Roger Durand, but also their  
12 daughter Priscilla, who felt compelled by the lack of  
13 an interpreter in this situation to do the best she  
14 could to include her parents in her brother's care."  
15 Do you dispute this sentence?

16 A. The part that I would dispute is the refusal  
17 to provide an interpreter. And I would agree that  
18 Priscilla felt compelled. I don't know if it was  
19 because of the lack of the interpreter, but I would  
20 agree that she felt compelled because she said she  
21 felt compelled to include her parents in her brother's  
22 care to the best of her ability. And she had been  
23 doing that for a long time prior to those May dates  
24 and including those dates.

25 Q. How about the very last sentence, "Her

1 interventions," Priscilla's, "could not compensate for  
2 the lack of an interpreter and may have even made  
3 matters worse"?

4 A. I would agree with the part that what she was  
5 doing would not have been equivalent to what an  
6 interpreter would have done. But I don't think  
7 there's any evidence that indicates that it may have  
8 been made matters worse.

9 MS. GILBERT: All right. Well, thank you.  
10 I have no further questions and so we don't have to  
11 come back tomorrow.

12 MR. FRANTZEN: we'll read and sign.

13 (Whereupon, the deposition was concluded at  
14 3:03 p.m. Signature was reserved.)

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A M E N D M E N T P A G E

PLEASE DO NOT WRITE WITHIN THE TRANSCRIPT ITSELF. LIST ANY CORRECTIONS BY PAGE AND LINE NUMBER ON THIS SHEET. IF ADDITIONAL PAGES ARE NECESSARY, PLEASE FURNISH SAME AND ATTACH THEM TO THIS AMENDMENT PAGE. YOU ARE ALLOWED 30 DAYS WITHIN WHICH TO COMPLETE THE SIGNATURE PAGE AND AMENDMENT PAGE. AFTER COMPLETING THESE PAGES, PLEASE RETURN THEM TO CAIN & CRANE COURT REPORTERS, POST OFFICE BOX 23833, CHARLOTTE, NC 28227.

IN RE: ROGER DURAND, et al. v. FAIRVIEW HEALTH SERVICES DEPOSITION OF: ANNA WITTER-MERITHEW

I, Anna Witter-Merithew, certify that I have read my deposition, which was taken on August 16, 2016, and request that the following changes, if any, be made:

Page \_\_\_\_\_ Line \_\_\_\_\_ Change\_\_\_\_\_

Reason for change \_\_\_\_\_

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Anna Witter-Merithew / /

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S I G N A T U R E P A G E

IN RE: ROGER DURAND, et al v. FAIRVIEW HEALTH SERVICES  
DEPOSITION OF: ANNA WITTER-MERITHEW

I, Anna Witter-Merithew, do hereby certify that I have read the foregoing deposition and that the foregoing transcript is a true and correct record of my testimony, subject to the attached changes, if any, on the amendment page.

\_\_\_\_\_

Anna Witter-Merithew

subscribed and sworn to before me this \_\_\_\_ day  
of \_\_\_\_\_ 2016.

\_\_\_\_\_

Notary Public

My Commission expires:

1 STATE OF NORTH CAROLINA )  
 ) CERTIFICATE OF TRANSCRIPT  
 2 COUNTY OF UNION )

3

4 I, Christine A. Taylor, RPR, and Notary Public  
 5 in and for the aforesaid county and state, do hereby  
 6 certify that the foregoing 174 pages are an accurate  
 7 transcript of the deposition of Anna Witter-Merithew,  
 8 which was reported by me, on behalf of Plaintiffs, in  
 9 machine shorthand and transcribed by computer-aided  
 10 transcription.

11 The deponent and parties did not waive the  
 12 signing of the deposition by the deponent.

13 I further certify that I am not financially  
 14 interested in the outcome of this action, a relative,  
 15 employee, attorney or counsel of any of the parties,  
 16 nor am I a relative or employee of such attorney or  
 17 counsel.

18 This 21st day of August, 2016.

19

20 Christine A. Taylor  
 Registered Professional Reporter  
 Notary Public 19960530077

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